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DANDAVIVEKA

OF

VARDHAMĀNA UPĀDHYĀYA

Translated into English By

DR BHABATOSH BHATTACHARYA

THE ASIATIC SOCIETY

1973

DAṆḌAVIVEKA

(ENGLISH TRANSLATION)

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DEDICATED TO THE SACRED MEMORY OF

HIS LATE REVERED FATHER

MAHĀMAHOPĀDHYĀYA KAMALAKṚṢṆA SMṚTITĪRTHA

(*1870-1934*)

WHO CRITICALLY EDITED THE DAṆḌAVIVEKA

AND OTHER NIBANDHAS,

BY

THE HUMBLE SON, THE TRANSLATOR

PREFACE

The *Daṇḍaviveka* (D.V.) of Vardhamāna Upādhyāya of Mithilā, who flourished in the latter half of the 15th century in the court of the King Bhairava as his judge, was published on the collation of several Mss. in 1931 by the late MM. Kamalakṛṣṇa Smṛtitīrtha of Bhatpara, West Bengal, as Vol. LII of the Gaekward's Oriental Series with an Introduction and Index. It is a unique mediaeval Sanskrit work on Hindu Criminal Law, produced by a Sanskrit scholar, actually connected with administration of justice. So it was utilized a few years later by the Patna High Court in a criminal case, not covered by the provisions of the Indian Penal Code. It was later on translated into Dutch by a Belgian Orientalist, Mr. Ludo Rocher, between 1950-52 and published in 1954. Mr. Rocher contacted the present writer while engaged in the translation to explain to him in English some difficult words and phrases, occurring in the Sanskrit text, as the editor, Smṛtitīrtha, had then died, leaving the present writer as his eldest son. Rocher secured a Doctorate of Ghent University and is now Chairman of Sanskrit studies in the Pennsylvania University of U. S. A. He came to India in 1969 along with his scholarly wife, Dr. Rosane Rocher and the present writer managed to meet them in the premises of the Asiatic Society, Calcutta, on November 26, 1969. The present writer, who had engaged himself in preparing a full English translation of the work from June, 1969, and already secured the permission of this Society for its publication in their Oriental Series, completed the work in March, 1970, and handed over the press copy to them to do the needful. The Ms. was approved by the Council of the Society and sent to the Sādhanā Press of Calcutta a year later for being set up in types. The present writer had in the meantime identified the numerous quotations from a score of ancient published works and incorporated them within the copy. The printed edition of D.V., though accomplished from several Mss., is highly corrupt and had to be corrected as far as possible in the translation in the foot-notes to make the text sensible and readable. The Sādhanā Press has just now completed the printing of the text portion of this translation with care and expedition in a very fine form on very good quality of paper. Now that the amendment of the Indian Penal Code has been taken up by the Ministry of Law, Government of India, the English translation of this mediaeval Sanskrit work on the same subject may prove useful to the Ministry for incorporation of its useful points.

Bhatpara BHABATOSH BHATTACHARYA
West Bengal
25th September 1973

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Dāṇḍaviveka (D. V.)—edited by MM. Kamalakṛṣṇa Smṛtitīrtha, G.O.S. LII, 1931.

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INTRODUCTION

The Dāṇḍaviveka begins with ten introductory verses, describing in the first nine the name of the author, Vardhamana Upadhyaya's patron King, Bhairava of Mithilā (modern North Bihar) and elder brother, Gaṇḍaka Miśra and two other teachers, Saṅkara and (Vācaspati) Miśras, at whose instance and training, he has composed this manual of Criminal Law, collecting his information from the earlier treatises on the subject and the concluding tenth verse of this introductory portion sets out the names of the seven chapters of this work, viz. (1) Theory and practice of punishment, (2) Murder, (3) Theft, (4) Molestation of other men's wives, (5) Abuse, (6) Assault and (7) Miscellaneous offences.

The first chapter on the theory and practice of punishment comprises 69 pages and is divided into the following sections:

(A) Vices following the non-punishment of the punishables,

(B) Merits of proper punishment,

(C) Requisites of the administration of criminal justice,

(D) Responsibilities of assessors,

(E) Enumeration of punishments,

(F) Gradation of fines,

(G) Subjectmatter of punishments,

(H) Variations of punishment due to the five causes, such as exemption (general or special), extenuation, infliction according to prescription, aggravation and consideration (including general rules, special methods, cumulation and commutation). This variation is also dependent on the following contingencies:

(*a*) The caste of the offender, (*b*) the thing involved in the offence, (*c*) the quality (of that thing), (*d*) the utility (of that thing), (*e*) the person, (concerning whom the offence has been committed), (*f*) the age (of the offender), (*g*) his pecuniary condition, (*h*) his qualifications, (*i*) the place and (*j*) the time of the commission of the offence and (*k*) the specific offence.

Section B of this introductory chapter, which deals with the merits of punishment, contains two important matters, viz. (1) that an aggrieved person may take the law into his own hands, when it is feared that injury to his person or property may arise from the delay, occasioned in reporting the matter to the king (Manu, VIII., 348-9) and (2) that the king is the only authority to pronounce sentence of death on criminals (Yāj., I. 357 and 359). These two provisions are relating to the right of private defence and the confirmation of the death sentence by the High Court, prevalent in modern times.

The corrupt readings of the printed text of D.V., have been corrected in the footnotes of this translation, wherever possible but some palpable errors, which still persist in section F of this chapter on gradation of fines, are noted down below:

(1) *Rakṣo' laṅkaraṇa*, quoted on p. 26 of D.V., as a synonym of *niṣka*, used in an earlier text, should be *Vakṣo' laṅkaraṇa* on the authority of lexicons, explaining it as *uro' bhūṣaṇa*, i.e. a (gold) necklace.

(2) *Ropaka*, quoted on p. 27 of D.V. from Viṣṇugupta, should be *rūpaka*, which is the name of a well-known coin (made of silver).

(3) *Cāndrikāḥ* and *Dhānikāḥ* (p.27 of D.V.) should be in the singular number as *Cāndrikaḥ* and *Dhānikaḥ*. The mention of *Dhānikāḥ* again on p.28 of D.V., as being made up of four *Trikā*-s, should also be similarly corrected.

The second chapter on *Murder*, consisting of ten pages only, though the briefest one, is nevertheless not devoid of interest and inherent importance. It contains an elaborate procedure of the method of detection of the murderer and a subdivision of the offence into those of man-slaughter and animal slaughter. It further subdivides the offence of manslaughter into four classes, such as Brāhmaṇa-murder, Kṣatriya-murder etc. and contains a further division of the offence of both types, i.e. man-slaughter and animal-slaughter into the specific castes and pecuniary conditions of the offenders themselves, taking into consideration presence and absence of intention and sudden and premeditated types, the part played by the accomplices and offers of provocation and implements used in the offence. The culpability of the offender, his rank, confession of guilt with consequent immunity from punishment or the award of a lighter one.

The third chapter on *Theft* is rather a big one, consisting of 74 pages. It consists of the following topics: definition of theft, differentiation between overt and overt thieves, general procedure of punishment and exhaustive treatment of the above two kinds of criminals with many subdivisions of the crime, as is evident from the following chart:

(A) Overt thieves

- (*a*) ordinary shopkeepers
  - (1) Transactors of spurious, under-weight and adulterated articles
    - (*i*) Stationary
    - (*ii*) Peripatetic
  - (2) Acutal adulterants of such articles
- (*b*) manufacturing traders, such as goldsmiths and leather workers.

(B) Covert thieves

(a) Kidnappers of human beings

(b) Stealers of quadrupeds

(c) Decietful snatchers of other men's movables of three kinds, such as the best, the middling and the trivial.

'Overt thieves' also include quacks, cheats, bribed assessors, deceitful intermediaries, false witnesses, gamblers and prize-fighters, bogus astrologers, cloth-damaging washermen, dishonest teachers, utterers of false *mantras*, practitioners of occult practices and swindlers.

Best things, mentioned in 'covert thieves', are also of many kinds, viz. weighed or counted, hence costly articles such as camphor, ricegrains, gold, silver and similar other precious things as gems and jewels and costly cloths. Theft of more than one hundred units of gold and costly jewels entails death-sentence or mutilation of limbs. Theft of so-called trivial things such as vegetables, fruits etc., the sale of which provides a person with his daily bread, sometimes turns out to be the most heinous kind of theft and entails corresponding punishment upon the thief. While forfeiting the entire property of various kinds of covert thieves, the king should leave aside that much which is absolutely necessary for the sustenance of the culprits with their families but no such concession is to be made while forfeiting the implements, used by a hole-digger into other men's houses at night.

The following text of Gautama (II. 3.45), laid down in the topic of theft, committed by a Brāhmaṇa, viz. 'He (i.e. a Brāhmaṇa) (who commits such crime) due to unemployment (*avrttau*), is liable to perform penances (only)', purports that 'failing to preserve his life by any other (lawful) means (and consequently committing theft), a Brāhmaṇa should under no circumstances be punished but should have to perform expiation (for his above sin)'. D. V. has interpreted (on p. 152) the term *avrttan*, occurring in the above text, as '*anyena prakāreṇa jivanānupapattan*' (i.e. finding it impossible to preserve his life (*jivana*) by any other means) and so according to it (p. 153) the word *jivana* here does not include *jivikā*, i.e. 'means of livelihood', which if included, will lead to the wrong prescription of committing theft being permitted for a Brāhmaṇa in economic distress, as made out by some digest-writers.

The fourth chapter on '*Molestation of other men's wives*', consistsing of 42 pages only, is the most interesting of all the chapters. It first clearly defines the word *paradāra* as 'other than one's wife' and includes within it both married and unmarried women and then subdivides married women into chaste and unchaste ones, belonging to superior or inferior caste, rela-

tion and stranger, secluded and unsecluded, wives of impotent or similar other persons and any other kinds of women. It includes both seduction and sexual intercourse and describes prohibited, forcible and fraudulent intercourse and incest. It contains specific sections on defilement and abduction of unmarried girls, cohabitation with unchaste women and with lower animals and unnatural sexual intercourse. It incidentally prescribes punishment of untruthful bridegroom and guardian of the bride, who takes back an already betrothed girl and repayment of the incidental expenses, if incurred by the bridegroom's party but authorises the bride's party to take back an already betrothed girl, in case a superior bridegroom turns up.

The fifth chapter on *Abuse* is highly argumentative. It first divides abuse into three distinct categories, viz. cruel, indecent and severe. It then subdivides abusive utterences into those against one's own castemen and against members of superior or inferior caste-men, followed by prescriptions of separate punishments of the several kinds of abuses.

The sixth chapter on *Assault* consists of 40 pages. Assault may be committed in three ways, viz. (1) by means of ashes etc., (2) clubs etc. and (3) by means of weapons. It consists of three parts, viz. the preparation, the commencement and the subsequent result. The respective punishments are also of three kinds, viz. light, medium and heavy. The light variety of abuse is of two kinds, viz. mutually started and started by either of the parties. The assult may be of four kinds in consideration of the movable and immovable character of the creature or thing assaulted and of the biped or quadruped character of the assaulted creature. The assaulter may also be good or bad and a single person or a group of persons. The judge must also arrange for the repayment of the booty, if snatched away in the assault and subsequently recovered, the repairing of the property of the assaulted person, payment of the medical expenses of a severely assaulted person and imposition in some cases of the double penalty and realisation of some amount of money from the injurer to appease the wrath of the injured person. In cases, where the injury, inflicted on an animal, cannot be healed up even by medicine and diet, the offender shall have to pay its price or furnish a substitute animal to the owner. Fathers and other superiors, if found instigating their sons etc., are to be held guilty but not otherwise. Owners of toothed and horned animals, obstructing a public road, should, if not clearing it of those animals, whereever posssible, shall be fined with the first amercement, which shall be doubled in cases where the passers-by have cried out more than once to remove the animals from the path. But if the rider on a quadruped or carrier of a heavy weight gives a shouted warning beforehand to the pedestrians, the former will be absolved from criminal liability. There are ten exceptions, according

to Manu, (VIII. 29-2) to the culpability of a conveyance and its driver but not of a palanquin-bearer unlike a chariot-drawing animal (p. 224). A person with a raised dagger, a violator of another man's wife's chastity, a robber, a poison-administerer, a killer by occult practices and a destroyer of another man's inherent strength are the six classes of assailants. But Brāhmaṇas in distress may take up arms for self preservation. There is no fault in killing an assailant, except it or he be a cow or a Brāhmaṇa. One should not also kill one's preceptor, adviser, parents, teacher, Brāhmaṇas, cows and all other hermits. Moreover, kidnapping of another man's wife is not in itself a cause of miscegenation but becomes so, if followed by procreation of a child in her.

Now begins the last and longest chapter on '*Miscellaneous Offences*'. As the offences, committed by individuals, are too numerous to be specified within the six well-known categories of crimes, described above, so the remaining ones are designated as '*Miscellaneous Offences*'. The king may take action *suo moto* in all these cases, which, not being complained against by his subjects nor reported to him by his own men, are called *nṛpāśraya* or *nṛpāśrita vyavahāras* (or lawsuits, solely dependent on the king for detection and subsequent action). This have been subdivided into four classes, prefaced by an introductory section, viz. *vyavasthā-varga*, *uddiṣṭa*, *muktaka*, *vivāda-pada* and *vyavahāra-viṣaya*, meaning respectively 'subdivision of the proposed fourfold classification', 'classes of offences', 'detached offences' including 'definition of and discussion about *sāhasa* or rash crimes', 'recovery of lost property', 'common pasture land', 'finding and division of a treasure-trove' and 'instances of conflict between *Dharma-Śāstra* and *Arthasāstra*', included within third section', the topic of 'sale without ownership', being the sole subject-matter of the fourth section on *vivāda-pada* and the very argumentative and interesting last section on *vyavahāra-viṣaya*, including 'arrest of the criminal', 'punishments of false witnesses and for accusing honest witndsses', 'punishment of perjurers and evidence-withholding witnesses', 'review of judgment and other connected judicial matters.' Our author's considered opinion is that, based on Nārada (*Sāhasa*, V. 12b), which is to following effect:

An injury, done to a person with the use of force (*sahas*), is called a *Sāhasa* but that, committed by the use of fraud only, is *theft*. Then follow such other topics as 'the usurpation of a childless widow's property', 'transgression of the rights and privileges of the higher castes by a Śūdra' and 'punishment for the cutting of trees, either having owners or ownerless'.

It may be stated in conclusion that the following modern threefold theories of punishment have been mostly followed in this mediāeval treatise on Hindu Criminal Law, viz. (1) preventive or deterrent (2) retributive and (3) reforma-

tive. The first one, viz. preventive or deterrent theory, is manifest in death-sentence, while banishment and mutilation of the offending organ of the culprit, fine, forfeiture of property and exacting compensation are instances of the retributive kind. Detention of the culprit in a jail or in a solitary cell for correction and repentance of the wrongdoer are the two methods of reforming and reclaiming him as a useful member of the society. The failure by such methods to bring about a change in the behaviour of a pardened and pre-destined criminal compelled the old lawgivers, just like their modern counterparts, to take recourse to the drastic method of deterrent and retributive ways of punishment. We gather from two texts of Manu (VIII. 348-9), quoted in Section B (of Chapter I) on 'merits of punishment' that an aggrieved person could in some cases exercise the right of private defence by taking the law into his own hands, when it was feared that his cause might be injured by the delay in reporting the matter to the king: We also learn from two texts of Yāj. (I. 357 and 359) that the king is the sole pronouncer of death-sentence on criminals and that in the absence of the express mention of the Kṣatriya king to do so, in a specific text, a reigning ruler of any other caste may inflict that penalty. This provision compares favourably with the modern principle of the confirmation of death sentences passed by a lower court, by the High Court only.

INTRODUCTORY VERSES

MAY the handful of water, in the evening adoration of Śiva and Pārvatī, protect (us)—the handful, carefully made by the hands on account of their having begun to tremble and so, not standing in need of real water, having already been filled up with drops of sweat and which, having been created by the closing (of the right hand) by the left on the knowledge of their (coming) use in prayers, assumed similarity with a conch.(1)

Let Hari in the form of a cowherd also protect us—Hari, who, while roaming in the forest in company with Rādhikā and touching her for wiping with his hand the spreading water of perspiration on her cheeks, at once became dejected for his unsuccessful effort to do the same, on account of the meeting of the consequently generated *sāttvika* waters of both of them and he having become invigorated on that account.(2)

He, who, though the best person in the Universe, having highly honoured His calling in His manifestation as Kṛṣṇa, protects, as a cowherd, the cows, placed under His charge, by carrying a rod in His hand and having been desirous of various pleasures, binds the cows with requisite strings and makes them graze again in other worlds.(3)

The highly powerful person (i.e. the king Bhairava, referred to in the next verse), having divested Śrīkusena (of the command) of his entire army, employs him as a soldier of his own, carrying out his orders and treats Kedārarāya, the very prototype of the king of Gauḍa (i.e. Bengal), as if he were his own wife (i.e. highly subservient to him).(4)

If he, Śrī Bhairava, the king of Mithilā, who is an adept in the art of curbing (the activities of) the wayward and highly deceitful persons, compassionately casts a single glance at this work of the author, Śrī Vardhamāna, it would then have achieved its purpose.(5)

May my elder brother, Gaṇḍaka Miśra and my two other teachers, Śaṅkara and Vācaspati (Miśra), approve of this effort of mine to compress all the previous *nibandhas* (on this subject) in this single volume.(6)

Let those, who are deliberate in thinking and have gone through various *nibandhas*, purify this work by their blessings and let wicked persons laugh at it. What of that?(7)

Not envying for its scent of merit nor becoming agitated for its connection with faults, a wicked man, (completely) ignorant of the merits and defects of a work, gets irritated, simply because it is the production of another man.(8)

Where Mahārṇava, teeming with good qualities, is the minister, the king himself is a scholar and (his) courtiers have not only subdued their pride and composed Purāṇas but also continue to cultivate learning, who will respect this work of mine, small-witted as I am? Or, the subject, one understands, is his treasure and one feels proud of it.(9)

General description (of the theory and practice) of punishment, followed by its six causes, has been dealt with in this *Daṇḍaviveka* in seven specific chapters.(10)

CHAPTER I

THEORY AND PRACTICE OF PUNISHMENT

MANU (VII. 14-15, 17-18) says in his praise of punishment: God originally created for that very purpose (i.e. for the protection of the people) *daṇḍa* (i.e. punishment), his own son, full of divine splendour, as the (veritable) *dharma* (i.e. justice), the protector of all beings. It is out of fear of this *daṇḍa* that all beings, moving and non-moving, conduce to the enjoyment (of others) and do not swerve from the path of rectitude. The king is *daṇḍa* incarnate, is the only male person (*puruṣa*), the leader and chastiser (of the subjects) and is known as the gurantor of the four stages of a man's life and of *dharma* (i.e. justice). *Daṇḍa* punishes all (erring) subjects and protects all (peace-loving) persons and remains awake, when everybody else is fast asleep. Hence the wise call *daṇḍa* as *dharma* (i.e. justice) itself.

D. V. adds by way of comment: *Tadartham*, i.e. 'for that very purpose' means 'for the purpose of' protecting the subjects, which is the king's duty', according to the (Vivāda—) ratuākara (p. 652) and 'for the king', according to Nārāyaṇa, is also justified, as the context concerns the king. *Dharma* (justice) means 'dispenser of justice', the equation of 'justice' with 'dispenser of justice' having been made for glorification. *Ātmajam* (i.e. his own son) *Brahma-tejomayam* (i.e. full of divine splendour)—the phrase means 'a son, not made of the five elements but partaking of the splendour of the divine golden (egg, the progenitor of Brahman, the creator)'. This praise is also for glorification. *Īśvaraḥ* (i.e. God) means 'the creator of all beings' and *Rājā* (i.e. king) is derived from *prakrti-rañjana* (i.e. pleasing the subjects by making them happy). *Puruṣaḥ* denotes that the king is the only male person, others acting like wives abiding by his orders, according to the commentary on Manu (by Kullūka Bhaṭṭa). But according to the Ratnākara (p. 652) it means 'like the supreme Being, residing as he does in the hearts of his subjects'. *Netā* (i.e. the leader) means 'he who makes the subjects achieve their respective ends of life'. *Jāgarti* (i.e. remains awake) denotes 'performs the work of a person, remaining awake, which is nothing but dispelling the fear from thieves etc. (of the sleeping persons).'

A. VICES FOLLOWING THE NON-PUNISHMENT OF THE PUNISHABLES

Manu (VII. 20 and 21b) says: If the king does not diligently inflict punishment on the punishable persons, the stronger men would injure the weaker

ones, just like the fish, pierced with a rod and placed on fire and there would exist no ownership over anything and the topsy-turvy condition (of the society) (*adharottaram*) would prevail.

D.V. adds: The reading adopted here of the first half of the second line (viz. *śūle matsyān ivāpakṣyan*) is that, adopted by Medhātithi and Govindarāja (two other commentators of Manusmṛti and also by Kullūka Bhaṭṭa). But there is also a different reading viz. *śūle matsyān ivābhidyur* (cf. another different reading, referred to by Kullūka, viz. *śūle matsyān ivāhiṁsyur*), both the above readings meaning viz. 'the stronger ones would always inflict injuries on the weaker ones', implying thereby *mātsya-nyāya* (i.e. the maxim of the bigger fish swallowing up the smaller fish). In matters of ownership also, no enjoyment of one's separate property, according to one's own wishes, would be possible, owing to its invasion by more powerful persons. The word *adharottaram* means 'reversal of the positions of the high and the low.'

The same authority (IX. 254) further says: The territory of the king, who receives shares (*aṁśāṁśam*)[1] of the booty from the thieves (*taskarād*), becomes disturbed and the king himself is deprived of heaven (after his death).

D. V. adds that the word *taskarān* (i.e. thieves) also includes 'persons, having criminal intimacy with other men's wives', who are also causes of disturbance (in a king's territory).

The Kāmandakīya (—nītisāra) (V. 82) says in this connection : There are five sources of fear from human beings[1a], (attending the collection of revenue by a king), viz. from persons who have partially bound up their hair (i.e. from hermits with matted hair)[1b], thieves, persons who are not the king's own subjects, the king's favourites and due to the greed of the king.

D. V. adds that collection of revenue is implied here.

Manu (VIII. 307) again says: The king, who realises revenue of both kinds, viz. *bali* and *kara* and taxes (*śulka*), receives presents (*pratibhoga*) and exacts fines (*daṇḍa*) (from his subjects) without offering them protection (in return of the above), goes to hell immediately (after death).

D. V. explains the above technical words in the following manner: *Bali*

[1] But Manu reads *aśāsaṁstakarān* (i.e. without punishing the thieves) for *aṁśānisam taskarād*, read in D. V., which former reading appears to be the better, as it not only reads *taskarān* for *taskarād*, which former reading has been repeated in the just following comment of D. V. but also *balim* (i.e. revenue) in the next foot of the above text becomes meaningful.

[1a] D. V. reads *mānuṣam* while the printed Kām reads *prajānām* i.e. of the subjects.

[1b] D. V. reado *āmuktakesāt*, while the printed Kām, reads *āyuktakebhyaḥ*, which means 'from the king's officers', which is the appropriate reading here.

means 'one-sixth portion of the agricultural produce such as rice' and *kara* is 'what is received by the king every month from the villagers and townsmen'. *Śulka* (or taxes) means 'one-twelfth portion of the profit from traders and other businessmen'. *Pratibhoga* consists of 'the daily presents to the king of fruits, flowers, vegetables etc.' There is a different reading viz. *Prītibhogam*[2], for *pratibhoga*, which reading means 'fruits etc., presented out of love to the king for his enjoyment'.

The same authority (VIII. 304 and VII. 28-29[3]) continues saying: One-sixth portion of the virtues of the subjects accrues to the king for his protection, afforded to them and a similar portion of their vices also goes to the king, not protecting his subjects.

Daṇḍa is a very great power, not fit to be wielded by kings, not proficient in Polity and destroys those kings, who deviate from the path of justice, along with his relations and friends. It then torments the fort, the territory, the sages and the gods.

D. V. adds: 'The torment of the gods is caused by the depredations of the wicked persons, resulting in the stoppage of oblations of ghee to the gods, as there is the Vedic text viz. 'Gods subsist on the gift of oblations of ghee.[4]'

Manu (VIII. 127a) says: Infliction of unjust punishments in this world destroys both kinds of fame, viz *yaśas* and *kīrti*.

D. V. adds: According to Kullūka's interpretation in his commentary on Manu, *yaśas* is the fame of a person, while living and *kīrti* is the fame of a person after his death, but according to Narāyaṇa (another commentator of Manu), the former consists in the knowledge of many persons, regarding one's merits and the latter is the spreading by many persons of those merits.

The same authority (VIII. 128 and IX. 249) further says: The king incurs great infamy and goes to hell (after death) by punishing the unpunishables (i.e. the innocent) and withholding punishment from the punishables (i.e. the guilty). Vice equally accrues to the king in putting to death a person, not to be so put to death and releasing a person, who is fit to be sentenced to death and virtue is acquired by the king, who does otherwise (*niyacchataḥ*) D. V. explains *niyacchataḥ* as 'sentencing to death a person, fit to be so punished and restraining death sentence from a person, not to be put to death.'

Kātyāyana (V.961) says : Kings and ministers specially incur sins

[2] But Manu reads *pratibhāgam* and Kultuka has explained it as in D.V.

[3] D.V. amits the second and third feet of v. 29.

[4] The printed text of D.V. omits *haviḥ* in the above Vedic text, viz *haviḥ-pradāna-jīvanādevā iti smaraṇāt*.

(*enam*) from the non-restraint of the vicious and infliction of punishment on the humble (*natānām*) i e. the innocent.

D. V. adds: The word *enam* in the above text is a Vedic word, meaning 'sin' or it may mean 'vice', according to the context. It is also read 'enaḥ', which is a simpler variant. The word *natānām* means 'of the humble', i.e. 'of the unpunishables'.

Vaśiṣṭha lays down: After withholding punishment (*daṇḍotsarge*) (from a guilty person), the king should fast for a day and a night taken together and the (advising) priest for three consecutive days and nights. But after punishing an unpunishable person (*a-daṇḍane*), the king should fast for three days and nights and the priest should undergo the *kṛcchra* penance.

D. V. adds the following comment: The word *a-daṇḍane* has a variant as *a-daṇḍya-daṇḍane*, which is also of the real import of the former reading, as the word *daṇḍotsarge* (in the first sentence) means 'by withholding punishment, as laid down in works on law'. So, the priest has to undergo fast for three days and nights, or perform the *kṛcchra* penance in not advising or wrongly advising (the king) respectively. The king and the courtiers also, as implied by the particle *ca* (i.e. and), added after the word *rājā* (i.e. the king) (in the second sentence), should undergo[5] three consecutive days' and nights' fast in case of punishing an innocent person.

Yāj (II. 307) also says on this point: If the king has realised a fine from a person in contravention of the provisions of law (*anyāyena*), he should dedicate thirty times the amount realised to the god Varuṇa by a formal resolve and himself make it over to Brāhmaṇas.

D. V. adds: The author of the Mitākṣarā in his commentary on Yāj. has explained the word *anyāyena* as 'out of greed etc.' and added that as the right of the previous owner of that amount of money is not extinguished in case it has been illegally realised (as fine by the king), so the latter should also give back the exact amount to the former, otherwise he would be guilty of theft.

B. MERITS OF PROPER PUNISHMENT

Manu (VII. 27a and 19a) says: Having inflicted proper punishments (on the criminals), the king attains prosperity in the three aims of life (i.e. justice, material benefit and desire). He (i.e. the king), who metes that (i.e. the punishment) out with propriety, pleases all his subjects.

Yāj. (I. 357 and 359) also says: The act of a king's infliction of proper punishment brings (to him) heaven (after death), fame and victory. The

[5] D. V. wrongly reads *ekarātram upavāso rājñaḥ* for *trirātram* etc.

king, who punishes the punishables justifiably and puts those very criminals to death, who deserve that (severest) punishment, gains the religious merit, derivable (only) from the performance of sacrifices, followed by hundred thousands of *dakṣiṇās* (i.e. priest's fees, paid to Brāhmaṇas).

D. V. adds by way of comment: The king has been specifically mentioned in the above text as the pronouncer of the death sentence (on criminals). Where there is no express mention (of the dispenser of death sentence) in a text, the (Kṣatriya) king or a reigning ruler of any other caste only is advised to inflict the extreme penalty, as they are enjoined to protect their subjects. Any member of the twice-born classes (or Brāhmanas) is not authorised to do so, as Baudhāyana and Āpastamba have prohibited in the following texts a Brahmana's taking up arms: A Brahmana is not to take up arms even as an experiment (Baudh.); takingup arms and practising vocal and instrumental music and dancing should not be resorted to by persons other than those, employed by the king (for those very acts). (Ap. II.25.14).

The author of the Mit. has made this comment on the above text of Yāj.: Where it is feared that injury to the cause might arise from the delay, occasioned in reporting the matter to the king, the aggrieved person may then himself put thieves and similar other miscreants to death, on the authority of the implied permission, evidently accorded by the following texts of Manu, beginning with the words "Arms may be taken up by all menbers of the twice-born classes (or Brāhmaṇas)."

This prescription of the Mit. applies to cases, where thieves etc. cannot be otherwise restrained on the very spot (of the commission of the crime) or cannot be traced after they have made good their escape, as the texts of Manu and others concern themselves with those specific cases, where there is no other alternative left (than to take the law into one's own hands).

Manu (VIII. 348-9) says: All members of the twice-born classes (or Brāhmaṇas) may take up arms, in cases of obstruction offered (by violent means) to the performance of religious duties (of the members of the twice-born classes), revolution, raised in course of a foreign invasion, resulting in the miscegenation of the twice-born and other castes, in self-defence, in clashes over the pilfering of the portions of *dakṣiṇās* (or priest's fees in sacrifices) and for saving the lives of women and Brāhmaṇas. In all the above cases, a person may lawfully kill the assailants (having no other alternative left open to him), without incurring any blame whatsoever. Kullūka Bhaṭṭa has said in his commentary on the above texts of Manu that a manslaughter, committed in the above cases, should not be punished as a rash act (or crime).

Manu (VIII. 350-351a) has also laid down the following texts: An approaching assailant, be he a teacher or a child, an old man or a very learned Brāhmaṇa, should be indiscriminately put to death, as a slayer of an assailant is guilty of no fault.

D. V. adds that the import of the above verses is that only when a person is unable to save himself by taking recourse to flight, he may without any consideration put to death any one of the classes of persons, specified above, ready to kill him. When the visible purpose of a text is possible, it is improper to find out its invisible purpose, if any. On the authority of the Vedic text viz. 'One should always protect oneself', there is an imperative duty of every person to protect himself, which duty is the visible necessity of laying down the above texts (of Manu) and if that self-defence is effected otherwise (than by taking the law into one's own hands), then in that very case the slaughter of an assailant will have an invisible purpose. But Nārāyaṇa (another commentator of Manu) has interpreted the above texts in a different manner, as follows: On the authority of a text of Gautama, "One should put to death an assailant, engaged in the very act of killing oneself, not literally but by causing mutilation of the latter's limbs, with the solitary exceptions of a Brāhmaṇa and a cow." Though in the two excepted cases the assailed person, causing death of a Brāhmaṇa or of a cow, does not really incur the sin of Brāhmaṇa-murder or cow-slaughter, yet he has been enjoined by the writers of *smṛti-nibandhas* to perform a slight penance.

The author of the Mit. is also of the same opinion. Medhātithi and Govindarāja (two other commentators of Manu) have quoted the following (anonymous) text in their respective commentaries: One should not kill one's Vedic teacher, parents, ordinary teacher, Brāhmaṇas, cows and all hermits.

As killing any creature without exception, is prohibited, so this further prohibition of doing so regarding teachers, parents etc. is intended to emphasize the above general prohibition. If the words '*gurum vā*' (i.e. either a teacher or etc.) in the previously quoted text of Manu are taken as a paraphrase of the Vedic text, enjoining self-defence, they may also be considered as an exception to the exception, embodied in the above anonymous text, resulting in the permission of killing even one's teacher, let alone other persons.

Or it may be taken for granted in conformity with the following (anonymous) text that "the statement of contradictory propositions simply stuiltfies (*hanti*) one's intended assertion and makes one reprehensible." We shall explain in our *Dvaitaviveka* the employment of the verb *hanti* (literally

meaning 'kills') in the (figurative) sense of 'stultification', as has been evidently done here.

Aṅgiras lays down: The king, the teacher (*guru*) and Yama (the god of death) discharge their lawful duties by inflicting punishment (on vicious persons). The author of the vices is also relieved of his (previous) vices (*Pāpāt*) and does not get entangled in (future) vices (*pāpena*).

The word *guru* means 'teacher', the word *pāpāt* implies "of vices, committed *previously* and being the subject-matter of the punishment" and[6] (the word *pāpena* denotes "in *future*, vices, for their non-commission out of fear of similar punishment.")

It has been laid down: The killer of a cow should be compelled to perform the (requisite) penance or pay the fine of first amercement.

As the above text prescribes alternatives of penance and punishment, so (the wise) have said that 'vices vanish with punishments also'.

Kullūka Bhaṭṭa also, while explaining the following text of Manu (VIII. 18),[6a] has thus opined that 'punishments also have got the efficient force of removing vices just like penances': Persons, having committed vices and having been subsequently punished by the king, become spotless and go to heaven, just like good men, performing good acts.

So Yama (the god of death), while discharging the duties, imposed upon him, performs them in accordance with the provisions of law.

So Nārada has laid down: Persons, with their vices unexposed, if not punished by their teachers or the king, are penalised by the rod of Yama and (subsequently) attain the lowliest positions (in their future lives).

C. REQUISITES OF THE ADMINISTRATION OF CRIMINAL JUSTICE

Manu (VII. 30) says: It is by a pure (*śucinā*), truthful and talented (*dhīmatā*) king only, having good assistants and making enquiries (into the actual facts of the criminal cases, brought before him) according to law that criminal justice can be properly administered.

D. V. says: The word *śucinā* means 'by one, who is pure in monetary transactions' (i.e. by an unavaricious person) and the word *dhīmatā* means 'by one, who knows the pros and cons of an act'.

Bṛhaspati (I. 87) says in the topic of law: The following are the ten limbs (of the body, i.e. requisites) of a criminal trial: The king, the *adhikṛta* (the judge), the courtiers (i.e. the ministers, priests, Brāhmaṇas and similar other

[6] The Sanskrit explanatory sentence, forming the text of the bracketed portion, has, due to a copyist's error, been taken out of its proper context and placed at the very end of this section B.

[6a] cf. *Vāsiṣṭha—dharmaśāstram* (XIX 45) for the self-same text.

persons), the Smṛti (i.e. the lawbooks of Manu and others), the accountant and the scribe, gold, fire, water and his (i.e. the king's) men (i.e. the constabulary). The portions within brackets are from the just following comment of D. V., which adds that 'Smṛti' also includes 'works on Polity'.

(Bṛ. I.84-85)— Of these (ten) limbs, the king constitutes the brain, the judge the mouth, the courtiers the arms, the Smṛti serves the purpose of the hands, the accountant and the scribe those of the two thighs, gold and fire are the two eyes, water is the heart and the king's men are the feet.

(Bṛ. I.88b-90 and 60a)— The presiding judge is the spokesman, the king is the punisher and the courtiers supervise the litigation, while the Smṛti lays down the judgment by way of decreeing (or allowing), the case of the petitioner and pronouncing punishment on the defeated party. Gold and fire are employed for administering oaths (to the contending parties) and water is used for thirsty and bewildered persons, while the accountant (or the cashier) counts the money (involved in the suit or realised as fine) and the scribe writes out the judgment. The king's own men bring (to the court) the defendant (or the accused person), the courtiers and the witnesses (of the suit) and keep under their vigilance both the plaintiff and the defendant (or the complainant and the accused persons) until the suit is ready for hearing.

Kātyāyana (V.112) says: If owing to considerations of time and place, it takes one or two days for the king's messenger to bring the plaintiff (or the defendant) (to the court), the latter is to provide means to the former (resting in his house).

Yāj. (II. 10b) lays down: Sureties (*pratibhū*) are to be taken from both the parties, able to ascertain the truth of the case (*Kārya-nirṇaye*).

D. V. adds the following explanatory paragraph: *Kārya-nirṇaye* is really *nirṇaya-kārye*, the reversal of the component parts of the above compounded words having taken place on the analogy of the words like *āhitāgni*. This *nirṇaya-kārye* means 'in the recovery of debts, as established by the litigation (in a civil suit) and in the payment of fines, as ordered (in a criminal case).' The word *prati-bhū* is derived from the prefix and root, *prati* and *bhū* respectively and means 'one, who exercises influence in the contended matter or is like either party of the suit' and is thus 'a representative.'

Kātyāyana (V.117) again says: If no one is available to stand surety in the petitioner's suit, he (i.e. the petitioner) is to be kept at the end of the day of the hearing of the suit under the custody of the king's messenger (in his own house), to whom he will have to pay his daily allowance.

Manu (VIII. 1—1st line only[7]) holds: Intending to supervise litigation along with Brāhmaṇas, the king (*pārthivaḥ*) should first make obeisance to the lords of the ten quarters and then begin his work. D. V. adds that the word '*pārthivaḥ*' means 'lord of the *pṛthivī* (i.e. the earth)' i.e. a king, who may even be other than a Kṣatriya.

The Mahābhārata lays down: A king, engrossed in pleasures and thus failing in his duty of supervising litigation of the parties, come to him for decision of their cases, suffers (afterwards) like (the king) Nṛga.

Yāj.[8] (II.Ia) opines: The king should supervise cases (brought to him by the litigants for decision) along with learned Brāhmaṇas (*brāhmaṇaiḥ saha*).

The author of the Mit. thus comments on the phrase '*brāhmaṇaiḥ saha*': The word *brāhmaṇaiḥ* is a third case-ending plural form (of the stem *brāhmaṇa*), thereby signifying that the Brāhmaṇas are not prominent here, owing to the grammatical rule viz. *sahayukte apradhāne* (i.e. the indeclinable *saha*, following a word, denotes the subordinate position of the latter). So the king is to be held guilty and not the Brāhmaṇas for not supervising or illegally supervising a litigation.

Kātyāyana (V.63) says on this point: When the king is not able to supervise litigation owing to pressure of other work, he should appoint a Brāhmaṇa, proficient in law (to do the same).

In the unavailability of such a Brāhmaṇa, the same authority (V.67) continues: When such a learned Brāhmaṇa is not to be had, a similar (i.e. scholarly) Kṣatriya or a Vaiśya, proficient in the sacred lore, is to be employed (by the king) but never should a Śūdra be engaged (in that work).

Manu (VIII. 21) also says: The kingdom of the king, where a Śūdra dispenses justice, dwindles away before his very eyes, like a cow in a morass.

Vyāsa also says: Not only the territory (of the king), who looks over administration of justice along with Śūdras, leaving aside the members of the twice-born classes, becomes disturbed but also his army and treasury are destroyed.

Manu further says: The king's courtiers should be evenly disposed towards friends and foes (i.e. should be impartial).

Bṛhaspati (I. 82b) says: The king's men should be trained to be truthful and submissive to the courtiers.

[7] But the printed Manu reads the second line otherwise, which purports that 'the king should humbly enter the hall of justice along with ministers also, who are conversant with the (five-fold) secrets of state-craft'.

[8] D.V. omits the name of Yāj. before the following quotation.

Kātyayana says: The king's men and the cashier and the scribe, appointed by him (i.e. the king), should translate into action all the (executive) orders of the courtiers.

Bṛhaspati (I. 65a) further says: The judge (*prāḍ-vivākaḥ*) or the (king's) Brāhmaṇa assistant should look over the king's[9] work (of supervision of litigation).

D. V. thus derives the word *prāḍ-vivākaḥ*: He, who puts questions to the plaintiff and the defendant, is *prāṭ* (derived from the root *pracch*, meaning 'to ask') and he, who discusses (*vivinakti*) the replies, given by them, in consultation with the courtiers, or pronounces judgment after discussing (*vivicya*) with them (both the words, *vivinakti* and *vivicya* having been derived from the root *vic*, prefixed with *vi*), is a *vivākaḥ* and the same person, discharging both the above duties, is known as a *prāḍ-vivāka* (= *prāṭ* + *vivāka*), presiding over a hall of justice (i.e. a judge).

Manu (VIII. 10a) says: He (i.e. the judge or the Brāhmaṇa assistant[10]), assisted by three courtiers (i.e. assessors), should look over the supervision of litigation work of the king.

Gautama (II.4 31) says: Truthfulness (i.e. impartiality) of a judge is the highest of all the virtues.

Bṛhaspati (I.73, 92-94 and 75) lays down: The halls of justice (*Karaṇa*) of the foresters, soldiers and merchants should be located respectively in the forest, the army and the merchants' assembly. The family (of the litigants), the guild (of the artisans and traders), and the corporation (of the Brāhmaṇas or of other worldly-minded people, following various occupations), fully approved of by the king, should decide the cases, concerning their members but other than those, relating to rash acts, i.e. crimes. The heads of these corporate bodies are known to be the arbiters of the cases of their constituents. Any (judicial) matter, left undecided by the family (of the litigants) should be taken up for adjudication by the guild (of the parties involved) and any matter, falling outside the knowledge of the guild, should be similarly taken up by the corporation (*gaṇa*). Any matter, not coming within the purview of the knowledge of the corporation, should be finally decided by the assessors, appointed by the king (*niyuktakaiḥ*). The assessors are superior (in power) to the family etc. and the judge (*adhyakṣa*) supersedes the assessors. Of the family, the guild, the corporation, (the assessors), the judge (*adhikṛta*) and the king,

[9] D.V. reads rāja (i.e. the king), which has been emended here as rājñaḥ (i.e. the king's) for reasons of consistency with the just following Manu's text.

[10] The verse, just preceding this half verse of Manu, speaks of the appointment of a learned Brāhmaṇa only but the context here supports the inclusion of the judge also in the portion within breackets.

the next ones are successively higher (in judicial authority) than the preceding ones—this is the established law in this matter.

D. V. adds: The Kalpataru (i.e. the *Kṛtya-kalpataru* of Lakṣmīdhara Bhaṭṭa) has explained the word *śreṇī* (i.e. guild), occurring in the above text, as 'a group of traders and farmers, following the same occupation'.

D. V. further says that the word *sabhya* (meaning 'the assessor') missing almost at the end of the above text, should be supplied between *gaṇa* (the corporation) and *adhikṛta* (the judge). When all the bodies, specified above, are in a fix to decide a criminal case, the king should be the final decider. This is the purport of the above entire text.

Both Bṛhaspati (I. 76) and Kātyāyana (V. 83) lay down: The king should have the cases of the hermits and of the magicians and persons, practising *yoga*, decided by those, proficient in the three superior Vedas (i.e. Ṛgveda, Yajurveda and Sāmaveda) only and should not himself adjudicate them, lest these persons may get enraged.

Nārada (III. 17) lays down: The finding in a piece of litigation, where all the assessors pronounce a unanimous judgment, is known to be a virtuous decision and it turns out to be a vicious one, if otherwise.

D. RESPONSIBILITIES OF ASSESSORS

The author of the Mit. is of opinion that assessors may have some fault, common among the ordinary masses and some other fault, peculiar to themselves. The former kind of fault has been thus described by Manu (VIII. 13) and Nārada (III. 10): One should not enter a hall of justice (*sabhām vā na praveṣṭavyam*) (i.e. simply for the purpose of seeing it) and should always utter truth (when questioned about), because a person becomes guilty by keeping silent or saying untruth.

D. V. thus comments on the above text: Here the word *sabhām*, which is a noun, comes as the special word, satisfying the curiosity of the hearer of the general word *praveṣṭavyam*, which is a verb. Thus it has been said (by Patañjali) in the chapter on grammatical fallacies in his *Mahābhāṣya* (which is a commentary on Pāṇini) that though the learned aim at grammatically flawless expressions, such usages as the following are also current (in the Sanskrit language): (1) The aphorism of Pāṇini (2.4.1.) viz. *dvigur ekavacanam*, [where *dvigu* (the name of a compound), which is a word in the masculine gender, has been syntactically connected with *ekavacanam* (meaning 'singular number'), which is a word in the neuter gender], (2) The sentence viz. *Yathāyuktam artham parīkṣitum*, [where the masculine noun word *artha*, (which ought to have been used in the first case-ending singular) has been used in the second case-ending singular to serve the double purpose of

its being an object to the infinite verb *parīkṣitum* and in apposition with the adjective word *yathāyuktam*, which also ought to have been used in the first case-ending singular of the masculine gender, the whole sentence meaning 'It is appropriate to enquire into the sense'.] and (3) The sentence viz. *Śakyam śvamāṁsādibhirapi kṣut pratihantum* [where the word *kṣut*, though an object to the infinite verb *pratihantum*, has been used in the first case-ending and not in the second case-ending, the whole sentence meaning 'Hunger may be satisfied even by partaking of such (uneatables) as dog's flesh'.]

But Kullūka Bhaṭṭa has suggested the supply of the verb *uddiśya*[11] (i.e. aiming at) after *sabhām* (the hall of justice). Medhātithi has, however, read the portion as *sabhā vā na praveṣṭavyā* and thus avoided the grammatical irregularity. The Mit. has also read it similarly.

Manu (VIII. 18), Nārada (III. 12), Hārīta and Baudhāyana (I. 10.30) say: (In case of a miscarriage of criminal justice,) a quarter of the (consequent) sin accrues to the criminal, another quarter to the witness, a third quarter to the assessors (*sabhāsadaḥ*) and the last quarter to the king.

D. V. adds: Kullūka Bhaṭṭa (in his commentary on Manu) has qualified the word *sabhāsadaḥ* (i.e. assessors) by the adjectival phrase viz. 'those, who do not prevent the perversity of the judgment'. The author of the Mit. says that 'the aforesaid blemish accrues to the assessors, only when the case is wrongly decided with the approval of the king.' 'A quarter of the sin accrues to the criminal' is to be understood to convey the sense of 'generating a similar additional sin in the criminal himself (apart from the original sin, already accrued to him),' as a sin, committed by one person, cannot be transferred to another person'. Govindarāja, Nārāyaṇa Sarvajña (two other commentators of Manu), the author of the Pārijāta, the Pradīpa, the Dīpikā and other digestwriters are of the same opinion. But Medhātithi says that the above sentence is simply recommendatory (and not mandatory).

Kullūka Bhaṭṭa has, however, said on this point: We have been told (by the Vedic texts) that the sin of the criminal partially goes to the witness and similar other persons and there is here no conflict with the contradictory opinion, as such conflict is prevented by the Shāstric authority. As the determination of virtue and vice depends solely on the authority of the Shāstras, so it can be safely imagined that they (i.e. virtue and vice) can be transferred to persons other than the original sinners and, moreover, the Lord Bādarāyaṇa has expressed his similar opinion.

D. V. says that the above argument is questionable, because, if it is

[11] The printed commentary of Kullūka, however, reads *avagamya* after *sabhām* and adds *vyavahāra-darśanārtham*, the two new words meaning '*knowing*' and '*for the purpose of witnessing a litigation*' respectively.

possible to interpret the Shāstras otherwise, there is no warrant for forging the above interpretation here, or else it will militate against various other texts.

Manu (VIII. 19) [cf. Nārada (III. 13) and Baudh (I. 10.30)] further says: When a person, fit to be censured, is so done, the king is relieved of the sin (which would have otherwise accrued to him), the assessors also are freed from its evil effects and the sin goes to the sinner himself.

Nārada (III. 3) says: An assessor, advising (the judge) justly, becomes neither despised (by the public) nor a sinner (in the eyes of God) and thus acquits himself of his responsibility but he incurs both despise and sin, if he does otherwise.

Bṛhaspati (I. 98) says: He, who, being devoid of avarice or hatred, decides a litigation in conformity with the legal prescription of the sacred books, attains the religious merit of a sacrifice.

Nārada, Yama and Kātyāyana lay down: A king should never pronounce a judgment, which is in contravention of the Śruti (i.e. the Vedas) and the Smṛti (like those of Manu and others) and is injurious to the people and should order a retrial of a case, if so decided. Even if an unjust (i.e. erroneous) judgment has been given by any other former king out of ignorance, the latter king should again decide the case in accordance with the prescribed canons of law.

Kātyāyana (VV.74, 76-78) says: When the king has passed an unjust judgment in a case between two contesting parties, the assessor should (immediately) report the matter to him and fully restrain him (from giving effect to that judgment). An assessor has got the duty of speaking out just and meaningful words but if the king turns a deaf ear to them, the assessor becomes absolved of the consequent guilt. But coming to learn that the mind of the king has swerved from the path of rectitude, the assessor may say some unpleasant words to him, whereby he incurs no sin whatsoever. Assessors should not, as a rule, wink at the conduct of the king, bent on doing injustice. If they do so, they, along with the king, go with downcast faces to hell (after their death).

D. V. adds that the above text exemplifies the latter kind of fault, peculiar to (the appointed) assessors only. In the former kind of fault, the unappointed assessors incur sin by maintaining silence or uttering improper words, while in this latter kind the appointed assessors go to hell, even if they do not try to dissuade the king, bent upon causing miscarriage of justice. When the king does not desist from his wrong course of action inspite of the persuasion of the assessors, the latter, even if uttering words, unpleasant to the king, are not to be found fault with on that account.

E. ENUMERATION OF PUNISHMENTS

Bṛhaspati (XXIX.2) says on this topic : Punishment is said to be fourfold, viz. admonition, reproof, fine and corporal punishment (*Vadha*). It should be meted out in consideration of the offending person, his pecuniary condition and the specific offence (committed by him).

D. V. adds the following comment: Admonition means "rebuking a person with the words : 'Thou hast not acted properly' etc." Nārāyaṇa has said that it consists in the following statement only, 'Cast him away'. Reproof is nothing but "reproaching a person with the words viz. 'Fie to thee, villain, perpetrator of evil deeds!'." Fines may be of two kinds, viz. fixed and fluctuating. The fixed kind of fines corresponds with the three kinds of amercements, viz. first, medium and high. Where a proportionate increase of fine is demanded by the repetition of an offence, the system of the fine to be imposed on the offender is of the fluctuating kind, which is generally of two categories, viz. in terms of *paṇas* and in terms of *māṣas*, which will be treated below in full. Corporal punishment is of three kinds, viz. torture, mutilation of limbs and death-sentence. Torture also consists of four kinds, viz. beating, restraint, putting into fetters and harassment. Beating is 'whipping', restraint consists in 'curbing a man's activities by imprisonment and so forth' and putting into fetters is also intended for the (almost similar) purpose of 'obstructing the operation of his free will'. Harassment may be effected in many ways, viz. shaving the head of the culprit, making him mount on an ass, imprinting his person with the words 'thief' etc., proclaiming his specific offence with beat of drums, making him patrol the whole city or town, so on and so forth.

Mutilation of limbs is of fourteen kinds, as there are fourteen parts of the body which can be mutilated.

Bṛhaspati (XXIX. 4) has enumerated them in the following text : Hand, leg, organ of generation, eye, tongue, ear, nose, half-tongue, half-leg,[12] the thumb and the second finger taken together (*saṁdaṁśa*), forehead, upper lip, anus and waist.

Manu (VIII. 125) also says on this point: (There are ten kinds of punishment according to Manu VIII. 124). (The limbs to be mutilated are) the genital organ, the belly, the tongue, hands, feet, eye, nose, ears and the entire body (*deha*). Fines may also be imposed (on the criminal in some cases).

[12] The very compound word of the text in this portion is *jihvā-pādārdha°* and D. V. argues in his corresponding comment that the word *ardha* (meaning 'half'), added to the second part of the above dual compound, is to be construed with *jihvā* (tongue) also, as it has been naturally done with *pāda* (foot), otherwise the mention of *jihvā* only will be a repetition of the same, occurring in an earlier portion of this text.

D. V. adds that the dual number in the words 'hands', 'feet' and 'ears' is not to be emphasized or it suggests two alternatives (i.e. either one hand or both the hands etc.) and that the above list of ten kinds of punishment is not exhaustive but only indicative of the minimum number (otherwise it would be in conflict with the previous list of Bṛhaspati). The mention of *deha* (i.e. the entire body) means the 'sentence of death', as Kullūka Bhaṭṭa has so interpreted it. This sentence of death is of two varieties, viz. pure and mixed, of which the pure variety again is of two kinds, viz. simple and complicated. The simple kind can be effected by the stroke of a sword, while the complicated kind by the use of various means, viz. making the criminal ride on a stake etc. The mixed kind of death sentence may be caused by combining mutilation of limbs with other kinds of corporal punishment, as considered necessary in particular cases.

F. GRADATION OF FINES

Śaṅkha-Likhita have laid down: The first amercement (*prathama-sāhasa*) ranges between 24 and 91 *paṇas*, the middle amercement (*madhyama-sāhasa*) between two hundred and five hundred *paṇas*, while the highest amercement lies between six hundred and a thousand paṇas. These three kinds of monetary punishments are to be inflicted in accordance with the gravity or otherwise of the offence committed and in consideration of the pecuniary condition of the offender.

D. V. adds: Thus in the following texts of Nārada, Yāj. and others the upper and the lower limits only of the fines, viz first, medium and highest to be imposed on the criminal, have been laid down. These fines are to be exacted from the offender in considerations of his wealth and seriousness or otherwise of the offence, committed by him. The prescription of the monetary punishment will, however, be limited within the minimum and the maximum, laid down in these texts.

Nārada says: The first amercement (*pūrvaḥ*) will extend from 40 (*catvārimśā*s *varaḥ*) to 96 (*paṇas*), the middle one lies between two hundred and five hundred (*paṇas*) and the highest one will be between five hundred and one thousand (*paṇas*).

D.V. adds that there is a variant viz. *caturvimśā*s *varaḥ* (meaning 'not less than 24') of *catvārimśā*s *varaḥ* in the above text.

Manu (VIII. 138) and Viṣṇu also lay down: Two hundred and fifty *paṇas* constitute the first amercement, five (hundred *paṇas*) the middle amercement, while one thousand (*paṇas*) make the highest amercement.

Yāj. (I. 366) also says: One thousand and eighty (*paṇas*) constitute the

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highest amercement, the middle and the first amercements consist of the successive halves of the just preceding ones.

Bṛhaspati VIII. 11a) says: One thousand *Kārṣāpaṇas* make the punishment of the highest amercement.

D. V. adds in its comment that a *kārṣāpaṇa* is nothing but a *paṇa*, as both the words are synonymous and that on the authority of the above joint text of Manu and Viṣṇu, the numbers such as twenty-four, spoken of in all other texts, are to be construed with *paṇas*, understood. The author of the Kalpataru and other digest-writers have also similarly interpreted the texts in conformity with the above view of Manu and Viṣṇu.

Manu (VIII. 131 & 134a) lays down the following explanation of the technical terms, denoting weights (of coins etc.): I shall now describe in full the technical terms regarding (weights of) copper, silver and gold, current in the world for transactions of sale and purchase (for their application to monetary punishments). The weight of six mustard seeds makes a medium *Yava*, three of which make a *Kṛṣṇala*.

D. V. adds that as the *guñjās*, used to measure a *Kṛṣṇala*, weigh variously, so a *Kṛṣṇala* or a *guñja* of the weight of three *Yavas* only is to be accepted, on the authority of the following text of the *Agasti-prokta;* A *guñjā* consists of three *Yavas*.

D. V. further says that this definition of a *Kṛṣṇala* holds good regarding the measurement of both gold and silver.

The *Agasti-prokta* further lays down: A *taṇḍula* is equal to the weight of eight white (or light brown) mustard seeds. It is known as the *Vaiṣṇava Yava.*, while others have called it *godhūma*.

Manu (VIII. 134b & 135a) says: Five *Kṛṣṇalakas* (or *Kṛṣṇalas*) make a *māṣa* and sixteen *māṣas* constitute (the minimum weight of) gold. Four such weights of gold make a *pala* and ten such *palas* constitute a *dharaṇa*.

Viṣṇu lays down in his fourth chapter on *māṣas*: Twelve *māṣas* make one *akṣaka* and four added to the twelve i.e. sixteen *māsas* constitute one measure of gold.

But the Abhidhāna-Koṣa says: *Guñjās* begin to weigh from five *māṣas* and sixteen *māsas* make an *akṣa* or *Karṣa* (which words are nouns in the masculine gender) and four such weights make a *pala*.

Other authorities have, however, said: Ten *māṣas*, produced from rice after moderate ripening in one's field, are equal in weight with a gold *māṣa*. Sixteen such gold *māṣas*, each of which weighs as a collection of five *guñjās*, constitute the weight of a (standard) gold (coin), which is tantamount to a *Karṣa*. Four such *Karṣas* make a *pala*, a hundred of which make a *tulā*. Twenty such *tulās* make a *bhāra*.

Caṇḍeśvara has laid down in the Bāla-bhūṣaṇa: A *Karṣa* is a quarter of a *pala* and a *tolaka* is half of a *Karṣa*. These are current in terms of *māṣas*, a *māṣa* being similarly spoken of as ten *guñjās*.

D. V. adds that this *pala*, which is equal in weight with eight *tolakas*, is current among the physicians.

Yāj. (I. 363b) says: *Pala* is known to be the standard weight of four or five gold coins.

Manu (VIII. 135b, 136a & 137) is of opinion: Two *Kṛṣṇalas*, weighed together, make the weight of a silver *māṣaka* (i.e. *māṣa*), sixteen of which constitute a silver *dharaṇa*, or a (silver) *purāṇa*. Ten such *dharaṇas* (or *purāṇas*) make a silver *śatamāna* and four gold coins of the standard weight constitute a *niṣka* in legal tender.

Yāj. (I. 364b and 365) also says: Two *Kṛṣṇalas* make a silver *māṣa* and sixteen such silver *māśas* make a *dharaṇa*, ten of which constitute a (silver) *śatamāna*, equal in value to a gold *pala*, four of which are equal to a *niṣka* in monetary transactions.

D. V. adds: The introduction of the word 'gold' in the section of silver, measuring a *niṣka*, is meant for the description of the standard, relating to gold, to be described below. So it has been explained in the digest, called the *Mahārṇava* that a *niṣka* is a silver coin, equal in value to four measures of standard gold, which is the criterion of the evaluation of all other metallic coins. Thus, the previously cited text of Manu (VIII. 137b), defining '*niṣka* as four measures of gold' is to be similarly interpreted with no prejudice to the section of silver. So Manu has added the word 'in legal tender' (*pramāṇataḥ*).

Viṣṇugupta (i.e. Arthaśāstra of Kauṭilya, cf 40.37) says in his section of silver: Eighty—eight white (or light brown) mustard seeds weigh equally as a silver *māṣaka* (or *māṣa*). Sixteen such seeds make the weight of a *dharaṇa* or a *niṣka* and twenty such seeds constitute a silver *pala*, ten of which latter make one *dharaṇaka* (*dharaṇa*?).

The Smṛti lays down: Five measures of standard gold are called a *niṣka* and the wise men say that one hundred and eight measures of gold are also known to be a *niṣka*.

But the Abhidhāna-koṣa is of opinion: The word *niṣka*, which is of masculine gender, means one hundred and eight measures of gold, a *dināra*, a *Karṣa*, a *Rākṣasa*, an ornament and a gold *pala*.

Manu (VIII. 136b) has laid down: A *Kārṣapaṇa* and *a pana* are to be known as the two designations of copper *Karṣa*.

The Ratnākara (p. 673) is also of the same opinion. But the (previously quoted) Abhidhāna-Koṣa further says: All *Karṣa* coins are also designated

as *Karṣapaṇas* and such of those coins as are made of copper are specially known as *paṇas*.

Rabhasapāla has defined "a *Kākinī* as one-fourth part of a *paṇa*, of an *udamāna* and of a *gaṇḍa*" but Rudra has defined the former as "equal to an *udamāna* but one-fourth part of a *paṇa* and a *gaṇḍaka* only."

Bṛhaspati (VIII. 9b—10b) says: A coin, made of a copper *Karṣa*, is known as a *paṇa* of the *Karṣa* type and coins of this weight are also known as *cāndrikā*, four of which make a *dhānikā*. Twelve such *dhānikās* are equal in monetary value of a gold coin, called *dīnāra*.

Visnugupta has further said: A *ropaka* (i.e. a silver coin) is one-seventieth of the value of a *suvarṇa* (i.e. a standard gold coin) and a *dīnāra* (which is also a gold coin) is equal in value to twenty-eight *ropakas*.

Kātyāyana (V. 493), as cited in the Caturvarga-cintāmaṇi, has laid down: A *māṣa* is known to be the one-twentieth part of a *Kārṣāpaṇa* and a *Kākinī* is the one-fourth part of a *māṣa* as also of a *paṇa*.

Nārada (cf. *caura-pratiṣedha*, vv. 58-60) says: A *māṣa* is defined as the one-twentieth part of a *paṇa* which is the one-sixteenth part of a *Kārṣāpaṇa* and a *Kākinī* is the quarter of a *māṣa* as well as of a *paṇa* (*paṇasya ca*). We have laid down these definitions of a *Kārṣāpaṇa* and other coins, which are current in the province of the Five Rivers (i.e. the modern Punjab) along with the measure of a *Kārṣāpaṇa*. This latter is also known as *trikā* (cf. *cāndrikā* above in the quot. from Bṛhaspati), four of which make a *dhānikā*. Twelve such *dhānikās* are equal in monetary value of a gold coin, called *dīnāra*.

D. V. thus comments on the above extract: The reading *palasya* for *paṇasya* in the Ratnākara (p. 7) in its topic of interest on debts is a copyist's error, inasmuch as the reading with a *ṇa* (i.e. *paṇasya*) is found in the Kalpataru, Kāmadhenu, Kṛtyasāra, Mitakṣarā and Smṛtisāra in their respective chapters on weights and measures (of coins etc.) and also because the mention of a *pala*, which is a gold *māṣa*, is irrelevant in the topic of *paṇas*, *Kārṣāpaṇas* and similar other (coins of baser metals).

Nārada (*caura* V. 57) further lays down: The silver *Kārṣāpaṇa* is current in the South and one, consisting of sixteen *paṇas* (copper coins) only, is current in the East.

D. V. adds: Thus a gold *māṣa* weighs five *rattikas*, while a silver *māṣa* weighs two *rattikas* only. This latter kind of *māṣa* is one-twentieth part of a *purāṇa* coin, as laid down by Kātyayana (cf. Manu, VIII. 136a, above, where it has been laid down that sixteen *māṣas* (and not twenty) constitute a *purāṇa*). A *māṣa* is the one-twentieth part of a *paṇa* on the authority of the

(just quoted) text of Nārada (*caura*° v. 58) and on the authority of another text of Nārada (*caura*' 55), to be cited below (p. 54 of D.V.), beginning with the word viz. *māṣāvarārdhaḥ.*, a *māṣa* is a quarter of a *Kārṣāpaṇa*, which is also equal to another kind of *māṣa*, which constitutes four *Kākinīs* only, according to that very latter group of texts (*caura*° v. 56) of the same author, to be cited below (p. 53 of D.V.). Another kind of *māṣa*, which is a silver one, is known from the earliar quot. from Viṣṇugupta in this section. So the general (i.e. variable) nature of a *Kṣṣṇala* is justified.

Thus, owing to the various senses, applied to the word *māṣa* and other words by the authorities (cited above), there arises confusion in their application (as fine) in Criminal Law. So Kātyāyana (vv. 491-2) has laid down the following prescription to avoid that confusion: Where one-fourth or a half of an undescribed *māṣa* has been prescribed (in a text), it should be interpreted as a gold *māṣa*. But where similar prescriptions occur with the use of the word *māṣaka* (and not *māṣa*), the interpretation would be that it refers to a silver *māṣa* (and not a gold *māṣa*). A *Kṛṣṇala* should be taken to mean a gold or a silver coin, as specified in the text, laying down the punishment.

D. V. adds that the above prescription is applicable, only where there is no special rule, laid down in the text concerned. For example, Manu (VIII. 393b) lays down in his topic on miscellaneous offences: A fine of a gold *māṣaka* should be inflicted (on the above offender) in addition (to the previously prescribed punishment).

So though the fine of a (gold) *māṣa* is prescribed as punishment for the owners of cattle, damaging (other people's) crops, the fine of a silver *māṣa* is to be inflicted on the authority of the following express text, which Bhāṣyakāra, quoted in the Ratnākara (p. 233), has laid down: Ordinarily gold *māṣas* are to be understood in cases of the mention of the word *māṣa* only in the punishments (prescribed for several offences), but the penalty for the damaging of crops by animals is to be fixed in terms of silver *māṣas* only.

But the Mit, has quoted the following text: (The owner of) a she-buffalo, damaging other persons' crops, should be fined eight *māṣas*.

D. V. adds the following lengthy comment: The word '*māṣa*', used in the above text, quoted in the Mit., is the twentieth part of a copper paṇa on the authority of the previously quoted text of Nārada viz. A *māṣa* is known to be the twentieth part of a *paṇa*. In the special text viz. 'A gold *niṣka* is to be paid (by the offender) for this offence', the word *niṣka* is to be interpreted as real gold, consisting of four standard measures of the same metal. But elsewhere (in the absence of such a special text) silver of the same quantity will have to be exacted as fine—this prescription, as laid down by the author

of the *Mahārṇava*, has already been quoted by us and may be followed here also, as it does not come into conflict with other special texts and also on account of the following prescription of Manu (VIII. 284b) in his chapter on *pāruṣya* (i.e. abuse and assoult): A fine of six *niṣkas* is to be imposed on a person, who pierces through another person's flesh (of the body, in course of assaulting the latter).

A similar punishment, laid down by Bṛhaspati in the following portion of his text viz. 'The middle amercement (is to be fined) for piercing through the flesh', is also to be construed in terms of silver *niṣkas*, as the value of the middle amercement comes up to the value of several *niṣkas* of silver only. In all these cases, involving fines of *māṣas*, the prescription of punishment is according to express texts.

In all other cases where there occurs a conflict between the interpretations (of particular expressions) of the *Smṛtiśāstra* (i.e. law-books) and *Abhidhānaśāstra* (i.e. lexicons), the authority of the interpretation, offered by the former, is to be accepted, as it has got more intimate connection with the expressions concerned than that, possessed by the latter. Even in those cases (where such authority of the law-books is relied upon), the interpretations of the technical terms and expressions are to be followed in consonance with those, laid down in the particular provinces of the *Smṛtiśāstra*, which have got the most intimate relation with the terms and expressions involved. In all other cases, the interpretations of the lexicographical literature are to be acted upon, as this literature is the settler of controversies, regarding the true imports of words, and also be cause the works of this particular liturature are recorders of traditional learning. But in case of conflicts between (or among) several lexicons, it appears that the punishments will vary in proportion to the gravity of the offences committed, just like the gradation of monetary punishments in direct proportion to the gravity of the wrongs done, prescribed by Yāj. (I. 366) (see above in this section).

Kātyāyana (V. 102 = V.490) says: The punishments, laid down (in law-books), for several offences in specific numbers also, are to be construed with *paṇas* (*paṇānāṁ grahaṇaṁ tat syāt*) or their monetary values, which the offenders will have to pay to the king.

D. V. adds. These *paṇas* are copper coins of the *Karṣa* denomination and the alternative payments of their monetary values are to be made, only when such coins are not available. The Ratnākara has, however, read the third foot of the above text (*paṇānāṁ grahaṇaṁ tat syāt*) as *yatrāparādhasya°*, which latter reading is questionable, as it, being as construed as a whole sentence with the next following foot, makes out no sense whatsoever,

The measures of rice and other grains will be laid down in the topic of punishments for theft of rice etc.

Now is defined *naigama* and other (technical) terms, used in law-books.

The same authority (i.e. Kātyāyana) (W. 678-682) has laid down: The citizens' committee is called a *naigama*, the association of various persons, belonging to the army, is designated as a *vrāta*, while a traders' guild is known as a *pūga*. Those, who have renounced monasticism after having once taken it up, are called *pāṣaṇḍas*, while a collection of Brāhmaṇas is known as a *gaṇa*. The craftsmen are technically called *śreṇīs*. An association of Jainas or of Buddhists goes by the name of *saṅgha*. A group of Cāṇḍālas and other untouchables is called a *gulma*. Bṛhaspati has laid down that *gaṇas*, *pāṣaṇḍas*, *pugas*, *vrātas*, *śreṇīs* and similar other groups of individuals are collectively known as *vargas*.[13]

D. V. adds: The word *gulma* in the above text means (a division of an army, according to Lakṣmīdhara in his Rājadharma, (-Kāṇḍa of the Kṛtya-kalpataru). [But this interpretation is not traceable in the printed edition of the above work in the Gaekwad's Oriental Series.] There is, therefore, no conflict between the definitions of both Kātyāyana and Lakṣmīdhara, as the infantry (of a division of an army) ordinarily consists of Cāṇḍālas and other untouchables. The word *śreṇī* is an association of traders (*vaṇik-samūhaḥ*) according to the (*Vivāda*)-*ratnākara* [But the printed Vivādaratnākara (B.I.) on p. 675 reads *śilpi-samūhaḥ* (i.e. an association of craftsmen), which reading is identical in import to that of the D.V., just quoted above.]

The same authority further says: The duties of the offspring of the four varṇas, raised in women of varṇas, not their own (*a-sajāti*) and hence termed *ajāti* (i.e. var*ṇa-less*), have been (mainly) laid down (in the above-quoted text).

G. SUBJECT-MATTER OF PUNISHMENTS

Nārada (cf. *sāhasa* V. 2) (quoted in the *Saṅgraha* or collection of quotations) says : Murder, theft, molestation of women other than one's own wife,

[13] Cf. Bṛhaspati's text above on pp. 15-16 of D.V., where the names of *sreni* and *gana* have been mentioned in another context.

Cf. also pp. 271 and 322 of D.V., where punishments, to be inflicted on the four *varnas* for renouncing monasticism after having once taken it up, have been specified. It should be noted here that the former quotation from Nārada (p.271) mentions punishments for the three higher *varṇas* only and the latter quotation from Kālyāyana (on p.322) lays down the punishment for a Sudra only, committing such offence. The penalty in the former text is exile for Brahmanas and servitude for Ksatriyas and Vaisyas, while sentence of death or any other milder punishment in commutation of the extreme penalty has been laid down in the latter text. But curiously enough our author, unmindful of the latter text, has prescribed the punishment of servitude for Sudras also, while interpreting the former text, on the maxim of *Kaumutika* (i.e. it goes without saying).

two kinds of severe acts (i.e. abuse and assault) and miscellaneous offences are the six-fold subject-matter of punishments.

D. V. adds the following note to the above text: All kinds of *civil* disputes originate either from greed or from ignorance and so either of the parties must be guilty of false assertion of right or concealment of facts, for which offences they become liable to punishments, in civil cases also. That is right. (But the matter, discussed in the following pages, is not at all concermd with such punishments, following incidentally from civil disputes.) The present treatise is, however, concerned with crimes proper, which are those, that are reported to the king by spies and in which offenders are hauled up (before courts of justice) by the king's men and then tried, *not from any private complaint.* These crimes proper are murder and similar other offences and not *civil disputes* like recovery of debt. So it has been laid down (by Nārada, 2nd line=prakirṇaka V. 1a): These (king's) men should discharge the king's duties (as his representatives) in detecting (and bringing before tribunals) offenders in case of commission of crimes, and of inequitable acts. But there is an additional class of offences, to be described (below) in the miscellaneous chapter, in which the king can act *suo moto.*

Recovery of debt and similar civil cases do not fall within the category of crimes like murder and similar offences but become so, when involving wanton denial of one's liability and similar other lapses. But authors of murder etc. are hauled before courts of justice for the express purpose of ascertaining their culpability and inflicting proper punishments upon them (in case their offences are proved). But the parties to a civil transaction like recovery of debt etc. are summoned for the establishment of the facts of the taking (of the debt) etc. (by the defendant). Punishments may also be incidentally inflicted upon the guilty party, if wanton denial of the liability etc. transpires in course of the trial. All these crimes originate necessarily from evil intention and are hence distinguished from such acts as are done out of error. Punishments are inflicted upon the perpetrators of the former class of acts, as they create commotion among the people.

So Manu (VIII. 386) says: The king, in whose territory neither a thief nor one, criminally intimate with other persons' wives, neither an abusive person nor an assaulter nor any other criminal resides, reaches the world of Indra (the lord of gods) (after his death).

D. V. points out that the above text has justifiably not included the names of the plaintiffs of suits, involving recovery of debt etc. and then adds the following further note to the previously quoted text of Nārada: The word *manuṣya-māraṇaṁ* (i.e. man-slaughter or murder) also implicitly includes "slaughter of cows and similar other big animals". The word *para-dāra*

(in the phrase viz. *paradārā-bhimarṣaṇam*, i.e. molestation of other men's wives) means 'any woman (*strī*) other than one's own wife', as violation of the chastity of a maiden has also been made punishable. The word *strī*, used in the above explanatory sentence, is also not restricted to human females only but also includes cows and other female animals, as carnal intercourse with the latter has also been penalised. *Pāruṣya* (or severe act) is nothing but a quarrel, which may be of two kinds, viz. abuse and assault, respectively caused by uttering speech and inflicting physical injury. This quarrel, consisting of the two above-mentioned kinds, is collectively of five different categories (as is going to be shown just below).

Nārada (vāg. V. 7a) says in his chapter on abuse and assault: Five kinds of both these offences also (*etayor ubhayor api*), taken together, have been spoken of (by the law-givers).

Of these, the three kinds of abuse such as cruel utterance etc. will be described below (p. 196 of D.V.). Assault is of two kinds viz. infliction of physical injury and harassment. These two kinds have been thus described by the same authority (vāg. V. 4):

Infliction of injury on another person's body by means of hands, feet, weapons and similar other things and harassment of other persons by throwing ashes on his body (*bhasmādibhis cābhighāto*) are called 'assault' (*daṇḍapāruṣya*).

D. V. adds: The Mit. has, however, read *bhasmādibhiś copaghātaḥ* and explained the expression as 'touching (another person with ashes etc.) and thus causing his mental agony.' The word *daṇḍa* may also be derived as *daṇḍyate anena* [i.e. the thing by means of which physical injury is inflicted (on another person)] and thus may mean 'body', by means of which *pāruṣya* or disfigurement (of another prson's body) is effected, the whole compounded word *daṇḍa-pāruṣya* thus signifying 'assault'. This offence is also of five kinds, according to the Ratnākāra (p. 273) and other authorities.

The same authority has further said: He, who of the quarrelling parties forgives the other party, is not only exempted from punishment but also becomes praiseworthy. Moreover, he, who begins the quarrel, deserves heavier punishment and the opposite party in such cases becomes punishable only when he indulges in various acts of enmity in the continuing quarrel. When the particulars of the culpability of both the parties cannot be definitely ascertained, they should receive equal punishments. When Cāṇḍālas and similar other members of the untouchable classes offend Brāhmaṇas, the latter should take the law into their own hands and punish the former. In case of their inability to do so, the king should do so. But he should only inflict upon them corporal punishment but should not impose fines. These are the five kinds of criminal procedure in cases of assault.

The above interpretation is correct, as these five kinds of consideration apply equally to cases of abuse and assault, otherwise the phrase '*etayor ubhayor api*' (i.e. 'also of these two') (in the previously quoted text of Nārada) becomes useless. This has been expatiated upon by Nārada himself, as he has quoted further below (his above statement) verses, describing the above five kinds, beginning with:

(1) *Pāruṣye sati saṁraṁbhāt*[14] (p. 215 of D.V.)
(2) *Pūrvam ākṣārayed yaḥ* (p. 232)
(3) *Dvayor āpannayos tulya (ṁ)* (p. 233)
(4) *Pāruṣya-doṣācca tayor* (p. 232) (where it is quoted as a text of Kātyāyana)
(5) *Svapāka-ṣaṇḍa-cāṇḍāla*[15] (p. 217)
(6) *Maryādātikrame* (p. 217)
(7) *Yam eva hi* (p. 217)
and (8) *Malā hyete* (p. 217)
} continuous verses of Nārada

D. V. says that the above-mentioned verses will be explained later on in their appropriate places. It then adds that it is for this reason that the Kāmadhenu and Kalpataru, after having described the various subdivisions of the offences of abuse and assault and quoted the half-verse of Nārada, descriptive of the divisions, beginning with *vidhiḥ* (*pañcavidhaṣtñkta etayor ubhayor api*), by prefacing it with the phrase viz. *atha vāg-daṇḍa-pāruṣye nāradaḥ* (i.e. Thus says Nārada in his section on abuse and assault), have finished their statements with the citation of the above eight verses with their interpretations. But these two authorities have not quoted the two verses (of Nārada), respectively beginning with 'paragātreṣu' (i.e. infliction of injury on another person's body) (p. 33 of D.V.) and '*sākṣepaṁ niṣṭhuraṁ* (i.e cruel utterance is admonition) (p. 196 of D.V.). Nārada thus defines 'miscellaneous offences' (*prakīrṇakam*): All those offences, not specified above, shall be designated as 'miscellaneous'.

D. V. adds in conclusion that as the duties recommended and actions prohibited are infinite in number, the performance of the former and avoidance of the latter are also endless. This fact has necessarily made the list of miscellaneous offences exhaustive.

H. VARIATIONS OF PUNISHMENT

The Vyavasthaupayika-varga-saṃgraha says: The *caste* (of the offender), the thing (involved in the offence), the *quantity* (of that thing), the *utility*

[14] This quarter-verse. though printed corretctly on the latter page, has been misprinted here (on p. 34) as '*a*-pāruṣye sati sambhavāt'.

[15] But D. V. reads *paśu* for *ṣaṇḍa* on p. 217 and explains it as *Klīva* (i.e. an impotent person) and also adds that it has been read as *ṣaṇḍa* (i.e. a foolhardy person) in the Mit.

(of that thing), the *person*, concerning whom the offence has been committed (*parigrahaḥ*), the *age* (of the offender), *power* (i.e. pecuniary condition of the offender), *qualifications* (of the offender), the *place* (of the commission of the offence), the *time* (of such commission) and the *specific offence* are the several factors (to be considered, while inflicting punishment).

D. V. adds by way of comment: '*Parigraha*' is in relation to the king, gods, Brāhmaṇas and similar other respectable personages. 'The *age of the offender*' means 'the childhood etc. of the arrested (*and convicted*) person'. '*Power*' implies 'the pecuniary condition and property of the culprit'. His '*qualifications*' are also "*relevant* to the infliction of *heavy or light* punishment upon him." The 'place' *is important for the consideration of the fact whether* the offence has been committed "in a village, in a forest etc." The 'time' is *relevant to finding out whether the offence* has been perpetrated "in the daytime or at night etc." The 'offence' means 'the specific offence (with which the criminal has been charged)'. The specific offence may be of two kinds, viz. the first offence and (*ca*) the repetition of the offence, which latter means 'intentional repetition of the offence'. The addition of the particle '*ca*' (i.e. and) implies *pratyāsatti* (i.e. confession of the guilt by the guilty person and similar other penitential actions). All the above-specified factors are the general causes of the heaviness or lightness of the punishments.

Considerations, due to the caste (of the culprit), are now being made:

Viṣṇu has laid down: The punishment (*kilviṣa*) (for an offence, committed) by a (learned) Śudra is eight times (*aṣṭapādyam*) (the value of the thing stolen or) of that laid down in law and it increases twice successively for the learned members of the successive higher *varṇas*.

D. V. adds: The word '*aṣṭāpādyam*' means 'multiplied by eight, i.e. eight times'. The word *kilviṣa*, (though ordinarily meaning 'sin'), here implies 'punishment'. Since the above aphorism of Viṣṇu ends with the phrase viz. *viduṣo S tikrame daṇḍa-bhūyastvam* [i.e. enhancement of punishment (occurs) in cases of transgression (of the law) by a learned man], which in its underlying import furnishes a cause, it is to be understood that the punishment, (prescribed for an ordinary criminal in case of theft etc.) becomes eight times increased, even when committed by a learned Śūdra.

So Manu (VIII. 337-338) says: The punishment for a Śūdra in a case of theft is eight times (the value of the article stolen). It becomes increased sixteen times, thirty-two times[16] and sixty-four times in cases of a Vaiśya, a Kṣatriya and a Brāhmaṇa offenders respectively. The punishment may

[16] D. V. contains the misprint of *dvā-viṁśat* (i.e. 22 times) for *dvā-triṁśat* (i.e. 32 times).

go up to one hundred times or twice sixty-four times (i.e. one hundred and twenty-eight times) in case of the theft having been committed by a Brāhmaṇa, who is (fully or partially) cognisant of the merit and defects of his actions.

D. V. thus comments on the above-quoted verses of Manu: Though (Nārāyaṇa) Sarvajna has (in his commentary of Manu) prescribed the above-mentioned three kinds of punishments for a Brāhmaṇa, devoid of merit, a Brāhmaṇa, with some merit and a highly meritorious Brāhmaṇa respectively, yet the merit, spoken of in those cases, is nothing but 'knowledge', otherwise the above interpretation (of Sarvajna) comes into conflict with the concluding epithet (of the original text) viz. *tad-doṣa-guṇa-vedinaḥ*, (i.e. those, who are *cognisant of their merits and defects*). Though lenient punishments, being justified, have been accordingly laid down in the cases of Brāhmaṇa and other superior caste offenders in comparison with that, prescribed for a Śūdra criminal, yet commission of an offence by a Brāhmaṇa etc., who are (fully) cognirant of its condemned character, becomes an occasion for the enhancement of their punishments. Even though such a cognition may sometimes vanish from the mind of an inferior caste person, it does not do so in case of a member of a superior caste. So the mention of the word *jāti* (i.e. caste) is justified in the discriminatory infliction of punishment. The Ratnākara (cf. p. 240), which has read the concluding phrase of the above text of Manu as *tad-doṣaguṇa-viduṣaḥ* (thus reading '*viduṣaḥ*' for '*vedinaḥ*', the former meaning 'one who knows etc.') has made the above sense clearer. We have quoted the above two texts of Manu from the original Manu-smṛti,[17] which have been rendered more explicit by a text from another authority, which is of Kātyāyana (V. 485), which runs thus: The punishments of a Vaiśya, a Kṣatriya and a Brāhmaṇa should be successively increased by two times than that of a Śūdra in specific offences.

CONSIDERATION DUE TO THE THING ITSELF

Nārada says: The punishment for theft of all cheap articles is five times the price of the thing (stolen).

CONSIDERATION DUE TO QUANTITY

Manu (VIII. 320a) lays down: Corporal punishment (*damaḥ*)[18]; should be inflicted in case of stealing paddy in excess of ten *kumbhas*.

[17] But the printed edition of the Manusmrti reads *tad-dosa-guna-vid-dhi saḥ*, which means practically the same thing.

[18] But the printed Manusmrti reads *Vadhaḥ*, which is also a variant in D.V.

Nārada (*caura* V. 27b) also says: Corporal punishment is to be meted out in cases of stealing all kinds of jewels numbering over one hundred.

CONSIDERATIONS OF UTILITY

Kātyāyana (V. 793) (cf. Manu VIII. 285, quoted on p. 229 of D.V.) says: The underlying principle of punishments in proportion to their respective utility is to be followed in cases of infliction of injuries on big trees.

The same principle is understood to be followed in the prescription of the various kinds of punishments, specified below.

The Saṃgraha (i.e. an anonymous text) lays down: Variations of punishment are composed of (i.e. due to) the following five components (i.e. causes): Exemption, extenuation, infliction according to prescription, aggravation and consideration (involving general rules, special methods, cumulation and commutation).

Of the above five causes (of variations of punishment), the *general* exemption (from punishment) has thus been described by Āpastamba (II. 27.21): The teacher, a Vedic priest, a *Brahmacārin*, who has just completed his Vedic studies and the king should (invariably) be exempted from capital punishment (*trānam syur anyatra vadhyāt*).

D. V. adds: Here *rājā* (i.e. the king) appears to be a king, other than that of the territory in question. The teacher and others (enumerated in the above list) should not also be put to death (even for their heinous crimes) (*daṇḍyānāṁ trāṇaṁ syuḥ*). But the Kalpataru has thus otherwise explained the above aphorism: The phrase *trāṇaṁ syuḥ* means 'should become saviours (of other people of the state) and should never behave indecently'.

Manu (VIII. 312) says: The master should always forgive the aspersions (*Kṣipatām*) of the supplicants (*Kāryiṇām*) (i.e. plaintiffs and defendants) towards him for the attainment of their own good and of the children, old men and the distressed persons, doing (*Kurvatām*) the same.

D. V. comments on the above text in the following way: The word *Kāryiṇām* means 'of the plaintiffs and defendants' and the word *Kṣipatām* implies 'casting aspersions (towards him), due to distress', which aspersions may be utterance of such statements of censure as 'fie to this king, who is lazy or ungrateful enough not to listen to the prayers of ours, who, though innocent, are being tormented by others'. The word *Kurvatām* also conveys the same idea. Thus, having been apprised of the accusations of the above-mentioned distressed persons, the king must needs exert himself for the alleviation of their distress. But if the accusations turn out to be false, those, making them, become the guilty persons.

Yāj. says in the topic of assault: Non-punishment (of a criminal by

the king) may follow his (i.e. the criminal's) taking leave of his senses, drunkenness and similar other causes (*moha-madādibhir-adaṇḍanam*).

D. V. adds: The word *ādi* in the above text includes 'lunacy and other states (of mental derangement)'.

The *special* exemption has thus been described by Kātyāyana (vv. 958 and 482):

When a just committed crime has left traces of its commission, (the king) should ask (the neighbouring people) about the motive of its commission and should thereafter inflict (*prakalpeta*) punishment on the alleged culprit by weighing (or ascertaining) his guilt carefully. But if the crime appears to have been committed owing to fear of risk (*prāṇātyaye*) on the life (of the alleged criminal), no punishment is to be meted out (on him). This is the (established) law according to Bhṛgu.

D. V. adds the following comment: The word *prakalpeta* (misprinted in this comment portion as *kalpeta* only) includes within it the idea of a causative verb (thus meaning 'should cause to devise for infliction etc.'). The word *prāṇātyaye* means 'when loss of his life would have occurred, had he not committed the crime'. So even though traces of the crime, existing in the form of implements left or in any other form, conclusively prove theft and other crimes, yet, if the motive of those crimes turns out to be the apprehended loss of the criminal's own life, no culpability whatsoever then attaches to its commission, for there is the permanent and hence untransgressable injunction viz. "(One) should save oneself." This very text also establishes the non-generation of any sin (in such special cases). Even if such sin is generated, it may be cleared away by expiation and so no (additional) punishment is to be inflicted in such cases. The prescribed judicial decision here is exemption from punishment. The whole of the above elucidation (by Kātyāyana) is in consonance with what has been laid down by Bhṛgu (*Bhṛgurāha*). The following text of Gautama (II. 3.45), laid down in the topic of theft, committed by a Brāhmaṇa, viz. 'He (i.e. a Brāhmaṇa), (who commits such crime) due to unemployment, is liable to perform penances (only)', points to the same conclusion. The purport of the above text (of Gautama) is that 'failing to eke out his living by any other (lawful) means (and consequently committing theft), a Brāhmaṇa should under no circumstnces be punished but should have to perform expiation (for his above sin)'. This principle is, moreover, in accord with the slaying of one's assailant.

The followers of Vātsyāyana have also read the following text in the topic on 'Sexual intercourse with other men's wives': (Sexual intercourse with another man's wife), which is an enemy of one's life and fame and a friend

of one's sin only, may even be resorted to by a person on account of unavoidable circumstances and not due to lust.

Manu (VIII. 341) lays down immunity from punishment of travellers, stealing a meagre quantity (of eatable vegetables), in the following words:

If a traveller of the twice-born (or Brāhmaṇa) class, whose resources have dwindled away (in the meantime), takes away two pieces of sugarcane or two radishes from others' fields, he does not thereby render himself liable to punishment.

D. V. adds: Owing to the universal applicability of the equitable maxim of self-presesvation, the word *dvija* (i.e. a member of a twice-born class) also includes Kṣatriyas and others.

The Matsyapurāṇa says on the same topic (i.e. of a way-farer *dvija*): (A person), taking two pieces of cucumber and melon, similar number of fruits and a very small amount of vegetables (belonging to others), does not become reprehensible.

Manu further says: One handful only of peas, paddy, wheat, barley, and pulses such as *mudga* and *māṣa*, may be appropriated (for satisfying their hunger) by persons on the roads (i.e. travellers), when not specifically forbidden to do so.

D. V. adds: By analogy of this text, in the absence of any express prohibition, no fault accrues to the appropriator of the eatables, mentioned in the former text.

The same authority (XI. 16 and VIII. 339) continues: A person, not having succeeded in securing his six meals (in three consecutive days), may steal at the time of his seventh meal (on the fourth day of his starvation) that quantity of food only, which would feed him for a single day, even from a person, who has debased himself (by his non-performance of charity and similar other pious acts). Fruits and esculent roots of trees (*vānaspatyam*), wood for performing sacrificial fire and grass for feeding cattle—(taking these from others, free of charges and without their permission) has been declared by Manu as not amounting to theft.

Nārāyaṇa has thus explained the latter text of Manu: "The word *vānaspatyam* is derived from *vanaspati*, which means 'trees generally' and hence the former word, meaning pertaining to trees, implies only 'pertaining to those trees, which die after once delivering ripe fruits (*Oṣadhis*)' and moreover, these trees should necessarily be of forests (and not of private gardens of individual owners), on the authority of the following text of Gautama (II. 3.25):

One may collect grass and twigs for (feeding) cattle and lighting (sacrificial)

fire respectively and pluck flowers and fruits of public (*aparivṛtānām*) trees, as if those were one's own property.

The above text contains the term *aparivṛta*, which means 'ownerless' (i.e. public) and the term *agnyartham* included within the text, implies 'for sacrificial fire only'. Accordingly, trees, grass, wood etc., if collected by a person even from the forest for the purpose of building one's house without the express permission of the king, will become the subject matter of theft.

D. V. adds: So the taking of any quantity of the produce of trees (of private or public ownership), other than those specified in the above text of the Matsyapurāṇa, is not permitted. Taking of paddy, pulses etc. only (specified in Manu and of private ownership) is permitted but not plantains (and other fruits), (belonging to the gardens of private persons). It is also to be noted here that a man, standing in need of grass etc., if either preserved by the king or expressly prohibited by him for being usurped by others, must secure beforehand the royal permit for that purpose but not otherwise.

But the author of the Mit. has otherwise explained the last text of Manu (VIII. 339) in the following manner: A *dvija* (i.e. a member of the twice-born classes), when not otherwise able to collect grass and similar other things for (feeding) cattle, (lighting) fire and (worshipping) gods, may appropriate even privately owned grass, wood and flowers but he is not permitted to collect fruits (from other persons' garden), on the express prohibition to do so, laid down by the previously quoted text of Gautama (II. 3.25).

D. V. then quotes the following anonymous text: "Any one, taking grass or wood, flower or fruit (belonging to others) without securing the respective owner's permission, deserves mutilation of his hand as the punishment (for his lapse)."

It then adds the following comment to it: The above text is to be understood as referring to a person, other than a twice-born one or to cases of non-emergency or to serve purposes other than (feeding) cattle etc.

Kātyāyana (V. 959) says: When offences by all persons (*sarveṣām*) of good conduct have been committed either under co-ercion (*avaśena*) or through error (*daivat*), no punishment is to be devised (by the king or the judge).

D. V. adds: The word *sarveṣām* (i.e. of all persons) includes Brāhmaṇas and others and *svasya* (i.e. of himself) is to be supplied after the word *avaśena* (i.e. being powerless), i.e. due to fear for being under the control of others. The word *daivāt* means *pramādāt* (i.e. through error).

The same authority (V.826) continues: When commodities are found to have been stolen from another country by a foreigner (*vaideśena*) (who has come to the country), (the king of the country) should confiscate the stolen articles and turn the foreigner out, without inflicting any punishment upon him.

D. V. adds: According to Halāyudha, the word *vaideśena* means *deśāntarāgatena* (i.e. by one, who has come from a foreign country). The same authority has further said that though such punishment applies to an unusual case, yet it concerns all the castes equally.

Nārada (*prakīrṇaka* vv. 35-37, except the last three feet of V. 35 and the first foot of V. 36) has thus described the cases of exemption from punishment of Brāhmanas generally: A Brāhmaṇa, who enjoys general immunity from punishment (*aparīhāro*) (for petty offences), should be allowed (priority of) passage on a road and may with impunity (*anivāritaḥ*) enter into another man's house for the sake of asking for alms. He shall not be considered guilty of theft, even if he collects sacrificial wood, flowers, *Kuśa* grass etc. from places, owned by others (*saparigrahāt*). Even if he hails from an enemy party (*parebhyaḥ*) or converses with other men's wives, he shall not be punished (*anadhyakṣaḥ*).

D. V. adds explanatory notes on some words in the above extract in the following way: The word *aparīhāro* means 'immunity from punishment' and the word *anivāritaḥ* implies 'if anybody obstructs him (while he is going on a road) by express words, that person (and not the Brāhmaṇa) will be held guilty'. The word *saparigrahāt* means 'from a privately owned place', taking sacrificial wood etc. from such a place by a Brahmāṇa does not amount to an offence. The words '*anadhyakṣaḥ parebhyaḥ*', taken together, mean 'Even if he comes from an enemy camp but without any express evil intention, he is not to be punished.'

Śaṅkha-likhita have also laid down: A Brāhmaṇa is entitled to priority in collecting fuel, water, wood, fire, grass, stones, flowers, fruits and leaves (of trees), to enter (unobstructed) into (the abode) of a god or step down a flight of steps (in any reservoir of water) or go into the room of a house, to take up arms (while proceeding) on a road or take his seat anywhere, to go unrestrained along with a group of travellers, proceeding towards somewhere (*prasṛteṣu*) and to reside with dishonest persons, (*cet*) when considered necessary. He is also entitled to collect grains of rice (from the fields), when eking out his living by the callings of *śila* and *uñcha* (i.e. gleaning ears of a corn *more than one at a time* and doing so *one at a time* respectively) from grains and to collect food for the day only (without keeping any future stocks). He is not to be asked for paying the requisite fees for delivery (of ladies in his family), the interest (on loans taken by him) or the requisite taxes for pursuing agriculture[19] or carrying on trade or the chargeable fare for crossing a river

[19] *Karṣa*, meaning 'agriculure', having been misprinted in the text as *Kārṣa* and then compounded with *āpaṇa*, meaning 'shop or trade', has become *Kārṣāpaṇa*, which means a certain coin. It should be *Karṣāpaṇa*.

(in a ferry-boat) and he is also not to be harassed for the non-payment of the above dues. He is privileged to converse with other men's wives or pay a visit to the ladies of the royal household and to transgress (the king's orders) owing to his having flown into rage.

D. V. adds the following commentary to the above—quoted lengthy extract from Śaṅkha-likhita: The words 'fuel etc.' refer to 'those things, absolutely necessary (for the performance of the Brāhmaṇa's religious duties) and the words '(abode of) a god' and 'flight of steps' imply 'a temple, owned by any other person' and 'a similarly owned flight of steps'. 'Entrance into the room of a house' refers to 'such a room, owned by others'. 'On the road' is to be construed as 'when on the road, leading to another country' and 'taking a seat anywhere' implies 'doing so without any valid reason'. *Prasṛteṣu anivāraṇam* means 'to go unrestrained etc.' and 'residing with dishonest persons' is to be understood as 'doing so, due to necessity'. The particle *cet*, used here, though ordinarily meaning 'if', is to be taken in the cumulative sense, as such indeclinables have got various shades of meaning. The phrase 'from grains' used after the words '*śila*' and '*uñcha*', means 'from the grains, left on the field after harvesting'.

Gautama (I. 8.4-13) has said on this point: If he (i.e. a Brāhmaṇa) is possessed of profound learning, conversant with the (four) Vedas and their (six) auxiliaries and familiar with *vākovākya* (i.e. Vedic texts, containing questions and answers), history and the purāṇic literature, practises them just in conformity with their injunctions and follows callings, not repugnant to them, having been sanctified by fortyeight sacraments, engages himself in the performance of the three (recommended) actions, having been disciplined in the six kinds of good conduct, he is then to be exempted by the king from the six kinds (of corporal and other punishments): death-sentence, piercing of his person and any other (severe and humilating) punishment, banishment (from the territory), (severe) censure and excommunication.

D. V. thus comments on the above text: The opening clause in the above text viz. 'If he . . . learning' concerns itself with learned (Brāhmaṇas) only and not ordinary Brāhmaṇas, and so the author of the Mit. has said about another text of Gautama (II. 2.1) viz. *rājā sarvasyeṣṭe brāhmaṇa-varjam* (i.e. the king appropriates every other (heirless) person's property, except that of a Brāhmaṇa) is similarly recommendatory (and not mandatory). 'The forty-eight sacraments' are '*garbhādhāna* (i.e. impregnation) etc'. 'The three (recommended) actions' are 'making of gifts, study and performance of Vedic sacrifices'. 'The six kinds of good conduct' are 'officiation in other persons' sacrifices, teaching and acceptance of gifts, over and above the three recommended actions, referred to above'. But Halāyudha has

interpreted the word '*trișu*' (i.e. in the three actions), occurring in the phrase *trișu karmasu abhiratah*, as meaning 'engaged in the performance of three-fold actions, such as making of gifts (including study and Vedic sacrifices)' or 'discharging the three-fold duties, such as officiation in other persons' sacrifices (including teaching and acceptance of gifts)'. He has also read the phrase '*ṣaṭsu sadācāreṣu*' as '*samācāriṣu*' and interpreted the whole clause as meaning 'disciplined in ways of life, recommended in the *Smṛtis* and also approved of by the *siṣṭas* (i.e. good men)'. The phrase '*ṣaḍbhiḥ parihāryo*' [i.e. exampted from six kinds (of corporal and other punishments)] means 'not to be corrected (by the king) by the infliction of punishments, both corporal and pecuniary, as the punishments of admonition and reproof (which may be meted out to them in certain cases) have been prescribed for them below'. The word *aparihāryaḥ* (i.e. not to be excommunicated) is to be interpreted as meaning 'in spite of the general prohibition of interdining with grave sinners, no such prohibition is to apply to them.' In fact, the word *vadhādibhiḥ* (i.e. of corporal and other punishments) has been inserted by us within the phrase *ṣaḍbhiḥ parihāryo* (i.e. exempted from six kinds), having read the latter with the words *a-vadhyaḥ* etc., (i.e. not to be put to death), just following it. The Pārijāta is of opinion that this exemption from punishment of a highly learned Brāhmaṇa relates to grave sins, committed unintentionally. This is right, as Kātyāyana (p. 66 of D.V.), has laid down the punish -ment of solitary confinement and similar other penalties for intentionally committing these grave sims. But Manu[20] (IX. 238a and 239) has laid down the following exception (to the above general rule, enunciated by Gautama, regarding learned and highly pious Brāhmaṇas): (Those Brāhmaṇas, who intentionally indulge in the commission of grave sins) are to be excluded from interdining (*a-sambhojyāḥ*) and are neither to be offered officiating services by priests in their sacrifices (*a-saṁyāyāḥ*), nor to be allowed to teach pupils (*a-sampādyāḥ*), nor also to be permitted to marry (*a-vivāhinaḥ*), and are to be shunned by their agnates and cognates, after having imprinted characteristic figures on their persons and should neither be sympathised with (by the good even when they fall sick with diseases) nor be saluted (by persons, inferior to them in age or status).

D. V. adds the following comment: The word *a-sambhojyāḥ* means, according to the Ratnākara (p. 641), 'they should not be allowed to mix with and partake of a community feast'. Nārāyaṇa also, in his commentary on Manu, has interpreted the above word to mean ('they are) not fit to dine together, being seated in a row'. But Kullūka Bhaṭṭa has explained it as 'those

[20] The printed text of D.V. has read the following quot. from Manu with its own comment, just before the opinion of Pārijāta, given by us just above them.

persons are not fit to be fed with rice etc.' The last two bracketed portions in the English rendering of the text of Manu above are from D.V.'s comment.

Manu (IX. 235-6) further says: A Brāhmaṇa-murderer, a drunkard, a thief and a violator of chastity of one's teacher's wife are known as the several kinds of grave sinners. For persons of these four kinds (*caturṇām api*), not performing expiatory penances, corporal or pecuniary punishments, as laid down in law, are to be devised.

D. V. adds: The phrase *caturṇām api* (i.e. of these four kinds) implies that Kṣatriyas and persons of the two other inferior castes only are to get corporal punishment and not Brāhmaṇas who will have to be past in prison or to be imprinted with characteristic marks (to be described below) and shall neither be put to death nor subjected to the punishment of mutilation of their hands, which have been specifically prohibited by Bṛhaspati.

An anonymous text says: The self-manifested (*svāyambhuvaḥ*) Manu has specified ten places (i.e. kinds) of (corporal) punishment, which will be inflicted on the three inferior *varṇas*, while the Brāhmaṇa offender will remain unhurt.

Bṛhaspati (IX. 10) also says: A Brāhmaṇa, even if charged with a grave sin, shall not be put to death but the king will punish him by sending him to exile and by imprinting his person with characteristic marks and by shaving (his head).

D. V. adds: The Ratnākara has however, interpreted the above text to mean that there is an option between exile and imprinting on his person. According to its interpretation, the following text of Manu (VIII. 380) lays down an alternative punishment for the Brahmaṇa offender: (The king) should never pronounce sentence of death on a Brāhmaṇa, even if convicted of any of the (grave) sins but should simply turn him out of his territory, with unhurt body and also with all his wealth taken away with him. If such an interpretation is accepted, the text of Baudhāyana, quoted just below, cannot be reconciled and also the prescription of offering publicity by imprinting on the offender's person, laid down by Yama, also quoted below, becomes more irreconcilable.

Baudhāyana (I. 10.18) has thus prescribed the procedure of imprinting on the offender's person: A Brāhmaṇa, convicted of destroying an embryo, violating the chaslity of his teacher's wife, stealing gold or drinking, should have the figures respectively of a head-less person, female organ, foot of a dog and banner imprinted on his forehead with heated iron and should be banished to the furthest end of his (i.e. the king's) territory.

Nārada (*caura*° VV. 44 and 45a) has also said: A murderer of a Brāhmaṇa,

violator of one's teacher's wife, a drunkard and a thief should have imprinted on their foreheads the figures respectively of a headless person, female organ, banner of liquor (liquor shop?) and foot of a dog and should have the foreheads also filled with the bile of a peacock.

D. V. adds: The last variety of (additional) punishment should be inflicted after having pierced it with a *ṭaṅka* (some sort of piercing instrument), the form being popularly known as *haritikā*.

Yama lays down: The king should have made, according to law, on a Brāhmaṇa, convicted of the above four heinous offences, the following (four) kinds of punishments: Shaving the head, banishing from the territory, making him mount on an ass and imprinting (characteristic figures) on his forehead for publicising the offence.

D. V. adds: So it appears that 'imprinting figures for offering publicity to the offence committed' may be considered as an alternative for 'making the offender ride on an ass'. All these punishments are for intentional commission of the grave sins and are to be meted out only when the sinner does not perform expiatory rites.

Manu has said elsewhere (IX. 240-242): The king should not imprint characteristic figures, described above, on the foreheads (of the members) of the three superior (*pūrve*) *varṇas*, going through expiatory rites but they should be fined the highest amercement. But a Brāhmaṇa offender, having committed the above offences in emergency, should be awarded the fine of the middle amercement or should be exiled from the territory (*vivāsyo vā bhaved rāṣṭrāt*) with his apparel and other valuables. But (*itare*) the members of the three other *varṇas*, having committed similar crimes unintentionally (*akāmataḥ*), should have their entire property forfeited (by the king) and should be exiled, (*pravāsanam*) only when they have done so intentionally.

D. V. adds the following comment: The commentary on Manu (i.e. that by Kullūka) has explained the word *pūrve* (i.e. superior) in the above text as 'Brāhmaṇas, Kṣatriyas and Vaiśyas' and has said that the word *akāmataḥ* (i.e. unintentionally), though added later in the above text, is to be construed with the earlier portion of the text as well. According to D.V., owing to the mention of the name of the Brāhmaṇa together with those of the Kṣatriya and Vaiśya, a Brāhmaṇa, devoid of merit, is only implied. As the punishment of the middle amercement has been prescribed in the text for a meritorious Brāhmaṇa, there occurs no contradiction in the above two statements. But the punishment of exile applies to both the above cases. All the above prescriptions of punishment for a Brāhmaṇa are for those Brāhmaṇas only, who are not exceptionally learned and the half-verse, beginning with the words *vivāsyo vā* (i.e. or should be exiled), should be taken into consideration only when such

Brāhmaṇa offenders do not agree to undergo expiation, the particle *vā* (i.e. or), added to the beginning of this half verse, laying down this alternative punishment. As the punishments of exile and imprinting characteristic marks have been laid down together (in a compound word viz. *nirvāsanāṇkane*) by Bṛhaspati (quoted earlier), so the latter form of punishment (i.e. imprinting etc.) does not hold good in cases of unintentional commission (i.e. is applicable to cases of wilful commission only) and consequently the earlier form (i.e. exile) is only valid (for such unintentional commission) and is thus equal in punitive character with and hence an alternative for the fine of the middle amercement.

The same principle has been emphasized by Śaṅkha-likhita thus: In cases of commission of the grave sins: a Brāhmaṇa sinner (or offender) should be awarded either transportation (from the territory) or imprinting characteristic figures on his person or should purify himself by penances, as a Brāhmaṇa is not to be bodily tortured (i.e. punished).

D. V. further adds the following by way of comment: The author of the Ratnākara has, therefore, opined that there is exemption from physical torture for a Brāhmana, undergoing expiatory rites and that the word *itare* (i.e. other *varṇas*) (in the Manu's text above) implies 'members of the three (lower) varṇas, such as Kṣatriyas'. The D.V. then goes on by saying that the forfeiture of property, laid down (in the concluding portion of the text of Manu, cited above), along with the pecuniary punishment of the highest amercement, spoken of above, is to be carried out, having regard to the profession (i.e. the pecuniary condition) etc. of the culprit. According to Kullūka Bhaṭṭa in his commentary on Manu, the word *pravāsanam*, used in the above-quoted text of the same author, means *vadhaḥ* (i.e. physical torture), as the lexicon, the *Abhidhāna-Koṣa*, has given in the following text several synonyms of that word: *Pravāsanam parāsanam nisūdanam nihiṁsanam* [i.e. the words viz. *pravāsana*, *parāsana*, *nisūdana* and *nihiṁsana* are synonymous (meaning physical torture)]. But Nārāyaṇa, another commentator of Manu, has thus otherwise interpreted the above text of his author: In cases of wilful commission of the above heinous crimes, the punishments of exile, which has not been explained in the above text and of imprinting characteristic figures are to be inflicted together and only in cases of the lesser kind and preliminary stage of the offences but actual death sentence is to be meted out in cases of their greater kind and final stage.

D. V. continues by saying that a highly learned Brāhmaṇa, when committing such grave offences unintentionally, are to remain completely immune from any sort of punishment. Meritorious Brāhmaṇas, who are not, however, highly learned, should get the punishment of the middle amerce-

ment and Brāhmaṇas, devoid of merit, that of the highest amercement. But both these classes should have to perform penances, otherwise they will be turned out of the country. But when the highly learned Brāhmaṇas commit the above-mentioned offences intentionally, they shall have to perform the penances, non-performance of which will entail banishment and the two other classes of Brāhmaṇas (i.e. the meritorious and the merit-less), committing the above offences wilfully, should have their persons imprinted with characteristic figures and should also be banished. Kṣatriyas and others shall be put to death for wilful commission and should be awarded in the opposite cases the punishments of imprinting etc., fines and banishments. This is the (well-considered and final) opinion. Here the imposition (by the king) of the fines upon the above (different kinds of grave sinners) is simply as a method of punishment only, as the fines (so realised by the king) have been prescribed to be disposed of.

So Manu (IX. 243) lays down: A pious king should never appropriate (*nādadīta*) the money (*dhanam*) of a grave sinner. If he does so out of greed, he thereby becomes tainted with the very sin (committed by the sinner). Nārāyaṇa interprets the word *dhanam* (i.e. money) as 'pecuniary punishment, i.e. fine'.

D. V. adds: The phrase *nādadīta* (i.e. should not appropriate) means 'should not actually take it, even if realised (by the king) as fine from the sinner'. What then will the king do with the money so realised?

Manu (IX. 244-245) has answered the above question thus: After having dipped that money (realised as fine from a grave sinner), he should dedicate it to the god Varuṇa (the god of water) or make it over to a Brāhmaṇa, possessed of learning and good conduct (*vṛtta*). Varuṇa is the god and wielder of punishment (*daṇḍadharaḥ*) (even) over kings (*rājñam*), while a Brāhmaṇa, proficient in the Vedas, is the lord of the entire world.

D. V. adds that Nārāyaṇa has interpreted the word *vṛttam*, occurring in the above text as meaning '(good) conduct', i.e. worship of the teacher and similar other pious acts, specified by Manu. The word *rājñām* (i.e. of kings) means 'even of kings' and the word *daṇḍadharaḥ* (i.e. wielder of punishment) implies 'as he (i.e. Varuṇa) is the punisher.'

Yama has laid down: After having realised money (as fine) from a degraded person, the king should distribute it in the assembly (*parṣadi*). D. V. adds that the word *parṣadi* means 'in the assembly', i.e. '(the king) should distribute it among the courtiers'.

EXTENUATION OF PUNISHMENT

Kātyāyana (cf. V. 960a) lays down the following punishment for theft and similar other offences, which consist of a series of acts: The punishments

of the first and the middle amercements are to be inflicted (on the criminal) in the beginning (*ārambhe*) and engagement (*pravṛtte*) respectively for such offences.

D. V. adds: The word *ārambhe* in the above text means 'the first action in the entire series of actions, intended to culminate in the desired result' and the 'first amercement' means 'a quarter of the full punishment (prescribed for the offence).' The word *pravṛtte* implies 'in many actions, done for (but not culminating in) the desired result' and the 'middle amercement' implies 'half of the prescribed punishment.'

Vyāsa has laid down: The punishment for having sexual intercourse with a willing woman, come of her own accord (to a person) is half of that, laid down in case of procuring (or approaching) a woman, residing concealed in her house.

Such examples may be multiplied.

INFLICTION OF PUNISHMENT ACCORDING TO PRESCRIPTION

Kātyāyana (cf. V. 960b) says on this topic: The prescribed punishment (for an offence) shall be inflicted on the criminal, who has committed it to its fulness (*paryāpta*).

D. V. adds: The word *paryāpta* in the above text is an adjective derived from the verbal noun *paryāpti*, which means 'the operation of all the criminal actions, necessary for the successful commission of the intended crime' and thus the former word means 'a person, who has perpetrated all those component actions.'

AGGAVATION (OR ENHANCEMENT) OF PUNISHMENT

Kātyāyana says: Rich men (if fined for their offences) will just pay the amounts, *imposed upon them* as fines but will not desist from the commission of the crimes and so there is no upper limit (*niścayaḥ*) to their fines. Hence the considered opinion (*iti niścayaḥ*) is that such penal measures are to be adopted for these *unrestricted sinners* (*avyāhatāḥ pāpāḥ*) as will render them incapable of repeating those injurious acts.

Gārgīya-mānavas have laid down the following *special* rule about punishments: Gautama has said that a criminal may be leniently (*śaithilyāt*) punished for his first (commission of the offence).

D. V. adds that Halāyudha, after having first quoted the previous text (of Kātyāyāna) and read therein *apohatāḥ pāpāḥ* for *avyāhatāḥ pāpāḥ* (and then quoted the half verse of the *Gārgīya-mānavas*), has thus added his *own* explanation:

"The meaning of the above entire matter is: The punishments, prescribed for specific offences, should not in all cases be meted out to the first offender but this concession will apply only when it is understood that the infliction of the punishment will *restrain the criminal from the further commission of the crime*. Those criminals, who do not, however, desist from the repetition of the crime even after the imposition of the lenient forms of punishments, are to be drastically deterred (*pāpānapohatā*) by the king, who will then devise such appropriate punishments for them as will incapacitate them to repeat the offences in future."

D. V. then goes on by saying that the explanation by the Ratnākara of the word *śaithilyāt* (occurring in the first half of the second text, quoted above) as 'owing to the comparative unascertainability of the offence, committed by the criminal, for which he is going to be punished' is questionable, first, as there is no question of punishment when the offence has not at all been proved and so no further question of extenuation of punishment arises and secondly, because there is no scope for entertaining difference of views, according to the circumstances of specific cases.

The real import of the latter quotation, according to D. V., is the following:

The *Gārgīya-mānavāḥ*, i.e. the disciples of Garga, approve of the specific punishments for specific offences, as laid down by Manu and other authorities. But Gautama does not *wish to abide strictly by their prescriptions*. As the visible effect of inflicting punishment is restraining a *wicked* person from further commission of a crime, so it should be employed to such a degree as will achieve that purpose—this is the real import of the above prescriptive texts. Manu and other authorities have, therefore, laid down different kinds and degrees of punishment for the suppression of the criminal propersity of different types of offenders. The following text of Bṛhaspati (XXIV. 11) on the topic of *sangraha* (procuring of women?) is also of the same purport:

"The imposition of the first, middle and highest amercements as fines respectively on the three higher castes (or on the three types of criminals) and of higher amount of fines on rich offenders should be decided upon." The text of Manu (VIII. 336a), viz. *Kārṣāpaṇam bhaved daṇḍyaḥ* [(when any ordinary person) is to be fined a *Kārṣāpaṇa*)] etc. contains the same logic. The prescription of the alternative punishments of admonition, harassment, besmearing (the person of the offender) with cowdung, making him mount on an ass and of similar other privations for curbing the culprit's arrogance for abusing the judge, his teacher or a Brāhmaṇa, as laid down by Śaṅkha-likhitā also emphasize the same principle, as enunciated above by Kātyāyana.

While commenting on the text of Yāj (II. 26), beginning with the words ādhyādīnām vihartāram [i.e. (the judge should cause) the stealer of pledged articles etc.] the author of the Mit. has said: (The wise) have declared that the word *daṇḍa* is derived from the root *dam* (i.e. to punish) and hence it means 'punishment', i.e. '*punishment of unruly persons*'. So when the curbing of the criminal propensity of a wrong-doer is not (completely) effected by the imposition of the prescribed pecuniary punishment, he should be awarded a higher punishment, while a poor person should be penalised with the imposition of a fine, fit enough to put him into difficulty (according to the reading viz. *yāvatā pīḍā*, adopted by D.V.) or to curb his arrogance (according to the reading viz. *yāvatā darpopaśamaḥ*, adopted by Mit.). So when a criminal, even after paying the fine, prescribed for a particular offence, repeats the commission of that offence, he should be again fined a higher amount. But if it is foreseen in the very beginning of the trial that owing to the waywardness of the criminal, the fine, going to be imposed upon him, will not be enough to restrain him from the further commission of the offence, he should be fined in the very beginning as much amount as is considered proper to restrain him. So, if the settled view is that the first offender will be awarded the prescribed punishment and an old offender a punishment, commensurate with the requirements of his correction, then, if the first offender is unable even to pay the prescribed fine, he should be punished leniently, which cannot be helped. If the alternative corporal punishment of recompensing the pecuniary punishment by physical labour is inflicted in such cases, then not only the poor but all persons, (irrespective of their economic status,) can do so (i.e. exonerate themselves by doing phycical labour).

Vyāsa says: (The judge) should cause each of the wicked persons, jointly (i.e. forming a criminal conspiracy) engaged in the commission of crimes to pay twice the prescribed amounts of fines (specified for separate offences). Now will be laid down the maximum punishment for crimes, occasioned by the necessity of imposing higher punishments, owing to the gravity of the offences for their repeated commission, without, however, specifying 'twice the prescribed amounts', (as has been down in the earlier text of Vyāsa):

So Nārada (*caura*° V. 55a) says: Punishments, laid down in terms of *Kākinī* and similar other terms, are known to be inflicted in terms of *māṣas*. D. V. adds that a (pecuniary) punishment, specified for an offence in terms of *Kākinī*, may be increased, if considered necessary, to the limit of a *māṣa* and the same principle is to be followed in the following [portion of the text of the above author (*caura* VV. 55b and 56)], which runs thus:

(Similarly) Punishments, laid down in terms of a *māṣa* and a *Kārṣāpaṇa*, will have to be increased to a *kārṣāpaṇa* and four *Kārṣāpanas* respectively.

Punishments, consisting of two and three *palas*, will be similarly enhanced to eight and twelve ones.

Here a *māṣa* is to be understood from the mention of the term '*Kārṣāpaṇa*'.

The following text of Śaṅkha viz. 'The pecuniary punishment (of a criminal) may extend from a *Kākinī* to the forfeiture of his entire property' — is not in relation to the degree of repetition of the offences concerned but it simply states the utmost limit only, as both Nārada (*caura* V. 54a) and Śaṅkha have said elsewhere that 'corporal punishments begin from imprisonment and end in sentence of death' (cf. p. 56 of D. V. below).

An anonymous authority has thus prescribed the following general uppermost limit to all kinds of pecuniary punishments, specified and not specified: 'All the prescribed pecuniary punishments, beginning with a *Kārṣāpaṇa*, may be increased up to four times and all other penalties, not so specifically laid down, may be similarly enhanced.' All these punishments are, however, to be inflicted before the first amercement'.

D. V. adds: The first amercement means "two hundred and fifty *paṇas*". So for the offences, necessitating pecuniary punishments less than the above amount of *paṇas*, the penalties may be increased up to their four times on account of the gravity of the offences, caused by their repetition. But the Ratnākara (p. 660) has laid down that no such enhancement of fines is to be made in offences, punishable by the first and other amercements. The cumulation of physical (and pecuniary) punishments is also not prohibited in these latter cases, as the combined punishments of admonition, reproof, fines etc. have been prescribed in the following anonymous text:

All the punishments are to be inflicted together on a perpetrator of grave sins.

Manu (VIII. 336) says: Where (*yatra*) an ordinary citizen is fined a *Kārṣāpaṇa* only, the king should be punished (*tatra*) in that very offence with a fine of one thousand *paṇas*—this is the settled principle.

D. V. adds the folowing long commentary to the above text. The above prescription of the imposition of higher fines upon kings, ministers and similar dignitaries on account of their possession of greater wealth (than ordinary citizens) is justified. Nārāyaṇa also concurs with this view. Here the king should himself devise his own punishment and make over the money (realised from himself) to Brāhmaṇas or throw it away into water, as Kullūka has thus explained in his comment on this verse that 'Manu himself has said in another verse (IX. 245): *Iśo daṇḍasya varuṇaḥ* [i.e. Varuṇa (the watergod) is the presiding deity of punishments.]. So it appears that after having discussed (the unacceptability of) the pecuniary punishment of grave-sinners (IX. 243), a later statement of Manu (IX. 244), authorising the mak-

ing over of the fines, thus realised from them, either to the god Varuṇa or to Brāhmaṇas, on the analogy of the accrual of the corresponding sin to the king himself, in case he appropriates it, has already been described by us at the end of the topic on exemption (from criminal liability). This prescription for a king should not be interpreted as the negation of the very principle of pronouncing his own punishment also, on account of the uncertainty of the kinds of royal offences and the punishment having been laid down in an earlier text (of Manu VIII. 336) and also owing to the insertion of the phrase viz. *tam daṇḍam* (i.e. that fine) in the previously described text of the same author (IX. 244). So the interpretation by the Ratnākara (p. 660) of the word *rājñām* (i.e. of kings) [in Manu (VIII. 336)] as meaning 'avāntara-narapatīnām' (i.e. of kings of other territories) is justified, as 'one cannot punish one's own self.' Though Nārāyaṇa has (in his commentary on Manu) prefaced the above verse (VIII. 336) by saying that 'In short, he (i.e. the king) himself is also punishable', yet the maxim of *Kaumutika* (i.e. it goes without saying) is to be applied here, owing to the import of the words, constituting the above text, which should be taken as "only emphasizing the punishability of other (kings) also." (The reason for the above conclusion of ours is that) the making over of a thing, equal in value of the punishment, passed on a king, either to the god Varuṇa or to a Brāhmaṇa, is no punishment at all, as it has nowhere been laid down to be a substitute for the actual fine. On the contrary, it has been laid down in conclusion (by the same authority IX. 246a) just below the above prescription that 'where the king shuns the practice of acquiring wealth from the vicious persons, (men are born after full period of gestation and become long-lived)' (*yatra varjayate rājā pāpakṛdbhyo dhanāgāmam*).

Such being the settled conclusion, it may be asked, 'How should the king, who is the chief of the state, be made to desist from the commission of crimes in his total exemption from punishments, as there is nobody to protest against his conduct?' The reply is, '(He should desist) from the fear of hell (after his death), from undergoing the rigours of the performance of penances or from the fear of censure (in this life) and of infamy (after death)'. If it is said that "when the king goes on committing crimes, forgetting the fear of hell, owing to the intensity of his addiction (to material pleasures), which action on his part also amounts to his aversion to punishment, owing to the (similar) absence of any one, protesting against it, what is then the remedy left for the king's actions", (we reply that) the (ultimate) remedy (in such cases) consists in the performance of the penances (by the king), (physically) able to do so and in the gifts of cows etc. as their substitutes, when not so (physically) fit. Those gifted (animals or) articles are to be made over to

Brāhmaṇas and other worthy recepients. The opinion of Nārāyaṇa, recorded above, is to be thus interpreted. If it is again asked, "why should no pecuniary punishments, which are weightier (in efficacy) than gift of cows etc., be inflicted (on the king), when he is not physically fit to undergo penances?", the reply is that though pecuniary punishments are undoubtedly weightier than such gifts, yet punishment and penance have been laid down as alternative methods of correction of a criminal. If it is further said than substitutes are substitutes only and not the real things, then the answer is that (if that view was right) the prescription of the gift of cows would not have been laid down. If it is persisted in saying that this is nothing but a sort of exemption from punishment only, the reply is that punishments for all cases have neither been prescribed nor are possible to be meted out, even when prescribed. So in such cases let there be admonition and reproof, passed on him (i.e. on the king) by the judge or by the royal priest. Having this in mind, both Nārāyaṇa and Halāyudha have laid down that "the punishment on the king should be administered by the courtiers."

Kātyāyana (= Nārada and Śaṇkha?) has prescribed the following both —ways limits of corporal punishment: Corporal punishments may extend from imprisonment to death-sentence.

I. COSIDERATION OF THE METHODS OF INFLICTING PUNISHMENT

These methods include the ordinary and the extraordinary ones, the cumulation of several punishments and their commutation and are thus fourfold, as has been gathered from the authoritative texts.

I. THE ORDINARY METHOD OR RULES

The parents and similar other persons, except in actions of inflicting physical injury to the king, are to be punished with admonition only for their offences, wherein the recluses and similar other persons are to be administered reproof.

Manu (VIII. 335) says: If the father, teacher, friend, mother, wife, son and priest do not discharge their legal duties, the king should not consider them as unpunishables.

Yāj. lays down: The priest, performing Vedic sacrifices, the ordinary priest, a minister, a son, marriage relations and friends, if found deviating from the path of justice, are to be punished but those among them, who act injuriously against the king, are to be banished from the territory.

The punishment of the (former class) of erring persons has thus been laid down by Bṛhaspati (IX. 17a): (The king) should punish the teachers, priests and other venerable persons with admonition only.

Kātyāyana, however, says: (The king) should impose the punishment

of admonition (*vāg-daṇḍam*) on the parents etc. (*pitrādiṣu*)[21] and that of reproof (*dhik*) on the ascetics.

D. V. adds: The word *dhik* means *dhig-daṇḍanam* (i.e. the punishment of reproof). Though the above classes of persons have been declared as unpunishables (as will be seen just below), yet that immunity from punishment is to be understood as relating to pecuniary and corporal punishments only. So Śaṅkha-likhita have said: The following classes of persons have been declared as unpunishables:

Parents and persons, who have just completed their Vedic studies, priests and persons, who are roving mendicants or who have retired to the forest, those (who are superior in status to ordinary persons) by dint of their birth, actions, learning, conduct, purity and performance of (daily) religious duties. All these persons conduce to the religious welfare of the king. Women, children, old men and hermits also (belong to the above list of unpunishables). (The king) should suppress his wrath against them, (even if they do wrongs).

D. V. adds: 'Birth' (*jamma*) means 'belonging to a pure family' and 'actions' (*karma*) implies 'performance of *agnihotra* and similar other sacrifices'. 'Learning' (*śruta*) is 'nothing but the knowledge of the Vedas and their auxiliaries', while 'purity' (*śauca*) is 'both external and internal'. Persons, if possessed of these attributes, are to be exempted from punishments, inasmuch as they are 'conducive to the religious welfare of the king by doing good to him in the shape of helping him in his acquisition of one-sixth of the religious merit (of their religious acts)'. The Ratnākara (p. 635)[22] has said that the phrase *strī-bāla-vṛddhāḥ* (i.e. women, children and old men), placed afterwards in the above text, should be construed as 'not to be punished' (*apyaṇḍyatvam*). The inclusion in the above text of the word *tapasvinaḥ* (i.e. hermits), which is an adjective, implies, on account of the maxim of *hetuman-nigada* (i.e. a statement with a reason), 'only when those persons, such as parents etc., are practising austerities, they are immune from punishment'. 'Children and others,' occurring in the phrase *strī-bāla-vṛddhāḥ*, has been interpreted by Bṛhaspati to mean that they are to be admonished only. But if women indulge in sexual intercourse with their sister's sons' (the latter will suffer the punishment of death after mutilation of their private parts and) the former will suffer the same punishment (if they commit the offence intentionally), while the latter, committing such offence with

[21] But the Ratnakara (p. 635) has read *mitradisu* (i.e. friends etc.) for *pitradisu*.

[22] But the Ratnakara has in its interpretation added *stryādīnām apyabatānām adaṇḍyatvam uktam*, i.e. adult women also are not to be punished.

women of degraded castes, should have their ears cut off. The above prescription seems to be in consonance with Yāj.'s dictum (cf. Yaj. III. 231 and 233).

Kātyāyana (V. 481) further says: No punishment is to be inflicted on an offending teacher, parents and friends.[23]

Bṛhaspati (IX. 18) has said: Persons, born of the *pratiloma* form of marriage (i.e. marriage of a lower caste male with a higher caste female) and those in the lowest ladder of the social scale (such as *Caṇḍālas*) are known to be the dirt among human beings and as such, if they transgress a Brāhmaṇa, they are to be put to death but never to be fined[24] (*na dātavyā damaṁ kvacit*).

D. V. adds that the word *dātavyāḥ* in the above text means '*dāpayitavyāḥ*' (i.e. made to pay).[25]

Katyāyana (V. 783) again says:

No pecuniary punishment is to be inflicted on the untouchables, cheats, slaves, *mlecchas* and persons, born of the *pratiloma* form of union, when they are bent upon committing crimes (*pāpakāriṇām*) but they should be harassed physically.

D. V. adds: The word *pāpakāriṇaḥ* (which is the first case-ending plural form of *pāpakāriṇām*, a sixth case-ending plural form, used in the above text) means *pāpa-karaṇa-śītāḥ* (i.e. habitually bent upon committing crimes) and the word *prātilomya-prasūtāḥ* (similarly the first case-ending plural form of *prātilomya-prasūtānāṁ*, used above) means hunters,[26] story-tellers and *māgadhas* (?) etc. Other classes of persons of the same (despicable) type are to be dealt with in a following chapter on Abuse.

Vṛddhamaṇu has laid down in the chapter on 'thieves': The wealth of these persons, acquired as it is by foul means, is dirty and hence the king should kill them but never punish them with fines.

D. V. adds that this text applies also to persons, born of *pratiloma* union and there is nothing to withhold its applicability to such persons. The author of the Mit. has said that it applies to cases of commission of grave sins.

The same authority continues: Those, who are dependent on (*paratantrāḥ*) or under the service of (*dāsatvaṁ saṁsthitāḥ*) others, are designated as

[23] The explanatory note, copied by D.V. from Ratnākara and appended by the former after the previous text of Kātyāyana, has been so done by the latter after the present text of the same author on p. 635.

[24] But Ratnakara (p. 276) reads na *dātavya dhanaṁ kvaeit* in the body of its text and '*damaṁ*' in the footnote as a variant.

[25] Cf. Ratnakara, p. 276, which correctly reads *prātilomyāstathā* for *pratilomastathā*, read by D.V. in the beginning of this text.

[26] Cf. loc. cit.

destitutes (*anāthāḥ*), i.e. property-less and their proper punishment is physical torture.

D. V. adds: The word *paratantrāḥ* applies to 'wife, sons ettc.' and the word *saṁsthitāḥ* means 'have attained the status of'. The word *anāthāḥ* means 'destitutes'. Such destitute five kinds of slaves, born in their masters' houses, have been spoken of in one place, while in another place, ten kinds of another kind of slaves, (directly recruited and) kept in their masters' houses from time to time, have been referred to. So there is no repetition (or contradiction?) (of the number of slaves) in the above two classifications.

Another anonymous text says: Harassment, imprisonment (or tying up hands and feet with fetters) and physical torture (*viḍambanam*)[27] are the proper methods of punishing a slave and not imposition of fines on them.

The same authority (i.e. Vṛddhamanu) further says: No other punishment but harassment is to be meted out to children, old men, afflicted persons and women. A virtuous king should impose fines upon a (guilty but rich) woman but a guilty poor woman should be harassed only.

Manu (IX. 230) says: The king should punish women, children, lunatics, old men, poor men and diseased persons (by striking) with creepers, barks of trees, ropes and similar other things.

D. V. adds by way of comment: The 'poor men' in the above text are to be understood as 'such poor men as are unable to work'. The implication here is that the above classes of persons are not to be fined but chastised with the above-mentioned things only. The above prescription is, however, applicable to cases other than those, in which specific punishments have been laid down.

Śaṅkha-likhita say on this topic: Painters and artisans, who are Śudras, should, even when they have committed crimes (entailing upon them forfeiture of their entire property), keep with themselves tools of their respective industries. A virtuous king should not (also) confiscate the weights and measures (*tulā-māna-pratimānāni*) of the traders, land, seeds, rice (for the annual sustenance of the family), bullock-carts and implements of agriculture of the cultivators, the beating instruments, such as drums, ornaments and costumes of the dancers, house, bedding, ornaments and wearing apparel of the prostitutes, the weapons of the soldiers and similar other paraphernalia of all other kinds of businessmen. Because persons, being deprived of wealth, become vicious and unruly and their consequent sins are (necessarily) shared by the king, who should, therefore, neither impoverish them nor deprive them of their business requisites. The reason is that their very professions depend upon those requisites and they eke out their living, plying

[27] The word viḍambanam has been misprinted in D.V. as vilambanam.

those professions and their (consequent) residence in the king's territory adds to its prosperity.

D. V. adds: The Kalpataru has read *samutthānāni* instead of *tutā-māna-pratimānāni* in the above text and interpreted it as 'things necessary for carrying on their trade'.

Nārada (*prakīrṇaka* V. 11) also says: Even in a punishment, entailing forfeiture of the entire property (of the criminals), the king is not entitled to confiscate the implements, by means of which the artisans eke out their living.

D. V. adds that the implements, spoken above, are exclusive of those, used by a thief for stealing.

Yama, however, lays down (a special rule): Even when making forfeiture of the entire property (of a criminal), the king should bear in mind the maxim viz '(One should provide) sustenance to one's dependents, which is a bounden duty of the head of a family' and leave aside one-fourth part of the (criminal's) property—this is the settled principle.

D. V. adds: The meaning of the above text is that 'even when forfeiting the entire property of a criminal, (the king) should leave aside one-fourth part of it for the sustenance of the dependents of the convict'. Halāyudha has also re-iterated the same principle by saying that '(the king) should not appropriate one-fourth part (of the entire property of the condemned person) out of compassion'. Though the above authority has introduced the above text (of Yama) in the topic of the socially degraded persons, yet it is applicable to other cases also on equitable principle.

Bṛhaspati (XXVII. 6b) has laid down in the topic of gambling: In a case, involving confiscation of the entire property, (the king) should *not* cause the criminal to give up *the entire portion* (*na sarvam*).

D. V. adds that the words *na sarvam* (i.e. not the entire portion), as read with the previously cited text of Yama, emphasize the prohibition of appropriating one-fourth portion (of the criminal's property).

The same authority (i.e. Bṛhaspati) (XXIII.9 and XXVII. 9b) [or Bṛhaspati in the 1st portion and Kātyāyana in the 2nd portion, according to Ratnākara (p. 370)] has further said. *Sāhasa* (i.e. a rash act or crime) is of five kinds, of which murder is the most heinous one and perpetrators of that crime (*tat-kāriṇaḥ*) should be positively put to death and should not be subjected to the payment of fine or to any other corporal punishment. The author of a murder (*tat-kārī*) should be awarded the capital punishment, after having been physically tortured seriously.

D. V. interprets the word *tat-kāriṇaḥ* as 'actual or direct murderers' and adds that the Ratnākara (p. 370) has also similarly explained the term

tatkārī, occurring in the text (of Kātyāyana according to it). So if a person causes another. person's anger, resulting in the latter's suicide by swallowing poison etc. such punishment (by the sentence of death) is not to be inflicted on the former.

The same authority (XXIII. 11) continues: A king, desirous of doing good to his subjects, should *not*, on account of the prospects of gaining friends or getting money or any other (covetable) thing, *let loose* (*moktāvyāḥ*) perpetrators of rash acts (*sāhasikāḥ*), who strike terror in the hearts all the people.

D. V. adds: The word *moktavyāḥ* (i.e. 'should not be let loose') means 'should be invariably put to death'. The above text is not a general one on the topic of punishment, as it contains the provision of alluring circumstances, such as 'on account of the prospects of getting money etc.' The above text has been cited, illustrating a special rule of punishment for a special type of criminals. Such special rules may be mutiplied on account of different causes of punishment.

So Kullūka Bhaṭṭa has thus commented on the text of Manu (VIII. 125), beginning with *upastham udaraṁ jihvā* (cited in full on p. 21 of D.V.):

The punishments of mutilation of specific limbs or harassment (of the criminal) should be resorted to in accordance with the comparative gravity or otherwise of the offences and prescribed fines are to be exacted from them in lesser offences, while the sentence of death should be pronounced on them, when they have committed grave sins (or most heinous crimes).

II. THE EXTRA-ORDINARY METHOD

Manu (IX. 248) says: The king should put to death a member of the lowest caste (*avara-varṇajam*), intentionally thwarting (i.e. tormenting) (*vādhamānam*) Brāhmaṇas and do so with the employment of special forms (*citraiḥ*), conducive to the physical agony of the culprit.

D. V. adds the following comment on the above text: The word *vādhamānam* means 'tormenting', *avara-varṇajam* implies a Śūdra and *citraiḥ* means 'by thrusting a pale into the body and by adopting similar other forms of punishment'. [cf. Ratnākara (p. 660), which, though wrongly reading *vādhamānastu* for *vādhamānantu* in the text-portion, explains it as '*atipiḍāyantam*' instead of '*iti pīḍayantam*', read in D.V.]

This aggravation of punishment from pecuniary to corporal, ending in the death of the criminal, has been rendered necessary owing to the gravity of the offence, committed by him. So, either on account of the gravity of the offence or by force of the authority of the above text (of Manu), this extreme

penalty cannot be extenuated and the method of carrying out this penalty on a Śūdra for his tormenting a Brāhmaṇa has thus been definitely laid down. But (Nārāyaṇa) Sarvajna has explained the term *citraiḥ* (of the above text) as 'of various kinds, involving the mutilation of the (culprit's) hands, feet etc'. Similar other forms of punishment may also be devised for such offence.

III. CUMULATION OF PUNISHMENTS

Bṛhaspati (IX. 12-13) says: Admonition should be administered in petty offences and reproof in the lowest crimes; fines should be imposed in the medium and the highest crimes, while sedition is to be punished by tying up (the criminal and throwing him into a prison). (A king), who is desirous of securing his own welfare, may also order banishment or imprisonment of the offender. All the above forms of punishment are to be employed together against a perpetrator of grave sins (i.e. heinous crimes).

Manu (VIII. 129-130) also says: Admonition in the first instance, reproof in the second, fines in the third and corporal punishment as the last resort are to be successively inflicted (on criminals). If, however, a criminal cannot be checked even by corporal punishments (short of the sentence of death), then all the above (four) kinds (*sarvam evaitat*) are to be cumulatively applied to those (incorrigible) criminals.

D. V. adds: Corporal punishment means 'mutilation of limbs'. But the Kalpataru has interpreted it as '*harassment*'. (Nārāyaṇa) Sarvajna has, however, explained the phrase *sarvam evaitat* as 'ten kinds of (corporal) punishments, previously described (by Manu VIII. 125), along with the three kinds of admonition etc'.

Bṛhaspati (I. 91) further says: The (first) two punishments of admonition and reproof are known to be within the powers of a Brāhmaṇa (*vipra*) but (the next two punishments such as) imposition of fines and infliction of corporal punishment are to be administered by the king only.

D. V. adds: The word *vipraḥ* in the above text means 'a judge'. [Cf. Ratnākara (p. 636) for almost the same interpretation.]

IV. COMMUTATION OF PUNISHMENTS

Bṛhaspati (IX. 19) lays down: A man, sentenced to death, may have his sentence commuted (by the judge) to the payment of a hundred gold coins, and one, sentenced to mutilation of limbs, to paying half the above amount, while one, sentenced to the cutting off only of the thumb and the second finger, taken together, may compound the above punishment to the payment of half of the above half amount (i.e. one-fourth of one hundred gold coins).

Kātyāyana (V. 964) (almost similarly) says: One, convicted to death sentence, (may requite his sentence) by the payment of one hundred gold coins, while one, sentenced to mutilation of limbs, (may do so) by paying half of the above amount. But one, sentenced to exile (*vivāse*), (may commute his punishment) to the payment of twenty-five coins only.

D. V. adds: (Vācaspati) Miśra (p. 157 of V.C.) has interpreted that only a *Brāhmaṇa* offender, sentenced to death, may thus have his sentence commuted to the payment of a hundred gold coins. D. V. further adds that there is a different reading viz. *vināśe* for *vivāse* (in the above text), which former also, meaning *tad-deśavāsasya vināśe* (i.e. in a punishment, involving the extinction of the offender's residence in that country), practically means the same thing, according to the Ratnākara (p. 662).

The same author (i.e. Kātyāyana) (VV. 965-966) continues: For persons, sprung from good families or engaged in the performance of proper religious duties and meritorious persons but who are not well-off, if found guilty of offences, entailing sentence of death, (the fine should follow) the above proportions ; or they are to be deprived of their entire wealth and quickly banished from the city (or territory), having due regard to the time and place of the commission of their offences. But if they are entirely wanting in wealth, they are to be tied up in a prison but should never be put to death. This special type of punishment is to be meted out, according to the sacred lore, to the above-mentioned classes of persons, found guilty (of the most heinous) offences (Cf. Ratnākara, p. 663).

Yāj. (I. 368) also says: (The king) should inflict punishment upon the punishable, after having been informed of the (particular) offence, the place and time (of the commission of that offence) and physical strength, age, occupation and financial condition of the offender.

Manu (VIII. 126) says: (The king) should impose penalty on the guilty persons, after having definitely ascertained the criminal propensity of the culprits, the place and time (of the commission of the particular offences), bodily strength (of the criminals) and the particular offences, (committed by them).

D. V. adds: According to the Ratnākara (p. 663), the punishments, spoken of (in the above text of Manu), relate to persons, incapable of commuting their corporal punishments to the payment of fines, ranging from a hundred gold coins but those criminals are to be deprived of their entire property.

Āpastamba (II. 27.16-17) says on this topic: In cases of murder of individuals, theft (*steye*) and forcible seizure of (another man's) land, (the king) should forfeit the (entire) property (of the criminal) and put him to death

(*vadhyaḥ*). But (*tu*) a Brahmana (criminal) (*brāhmaṇasya*) should suffer here the plucking out of his eyes (*cakṣurnirodhaḥ*).

D. V. adds: The Ratnākara (p. 329) has explained the words *vadhyaḥ*, *cakṣur-niradhaḥ* and *brāhamaṇasya*, occurring in the above text, as 'to be harassed' (*tāḍyaḥ*), 'plucking out of his eyes' (*cakṣur-utpāṭanam*) and 'of a Brāhmaṇa of the most inferior type' (*adhamatamasya*) respectively. (Vācaspati) Miśra (p. 140 of V.C.), though interpreting the last word, *brāhamaṇasya*, almost similarly as 'of a Brāhmaṇa of the inferior type' (*adhamasya*), has explained *steyam* as 'theft of gold' (*suvarṇa-haraṇam*).

D. V. adds: In fact, the word *vadhyaḥ* (in the above text) means 'to be put to death' (*ghātyaḥ*), which punishment applies to persons other than Brāhmaṇas, as is evident from the very word *tu* in the text itself and so the meaning of the word *Brāhmaṇa*, used in the text, does not stand in need of being qualified, as the Mit. says on this point:

"The eyes of the Brahmana (convict), while he is being expelled from the city (or the territory), should be covered with a piece of cloth etc. and should never be plucked out, otherwise the latter punishment comes into conflict with the text of Manu (Bṛhaspati?) (p. 46 of D.V.) viz. 'A Brāhmaṇa should remain unhurt' and with that of Gautama, (II. 3.43). viz. 'No corporal punishment (is to be inflicted) on a Brāhmaṇa". Thus, the punishment of a Brāhmaṇa (offender) is banishment only for offences, which entail the penalty of death on the criminals of the Kṣatriya and two other inferior castes (i.e. Vaiśyas and Śūdras). This prescription has been laid down in various other (authoritative) texts and is also to be applied here. D. V. adds that thus the propriety of the peculiar punishment of covering both the eyes of a Brāhmaṇa convict lies in the fact that such a criminal, when leaving his country, may get enraged by looking at it (with uncovered eyes.).

Kātyāyana (VV. 967-968) says: A Brāhmaṇa (*vipraḥ*) culprit, fit to be sentenced to death or to have his limbs mutilated (for his offence), should be made to enter into a solitary cell, where, being imprisoned, he will not be able to perform his (religious) duties—this is the proper punishment for a Brāhmaṇa, engaged in the performance of the holy religious acts (*vṛttasthasya*). A perjurer Brāhmaṇa should be banished from the territory and a Brāhmaṇa, (habitually) accepting improper gifts, should have his fault proclaimed to the public, while a Brāhmaṇa, who has cut off the limbs of a person, should also be restrained from the performance of his daily avocations by imprisonment.

D. V. adds the following comment: The word *vipra*, meaning a Brāhmaṇa, in the above text, means 'one bent upon practising religious duties', as according to the Kalpataru, the epithet *vṛttasthasya* (i.e. engaged in the

performance of the holy religious acts) (placed in the second line of the above text), implies 'other punishments for a wicked impious Brāhmaṇa'. The proper punishment for a pious Brahmana consists, however, in restraining him from the performance of his religious acts. (Cf. Ratnakara, p. 663)

The same authority (Parts of VV. 823-4 and full V. 825) further says: The school of Manu has definitely laid down that (pious Brāhmaṇa culprits) shall be banished from the territory, if caught (red-handed) with booty but when such Brāhmaṇa criminals are not so pious, whether caught with booty or not, they should invariably suffer forfeiture of their entire property. But if such impious Brāhmaṇas are also poor but possessed of physical strength, they should be tied up with fetters, made of iron, given insufficient food and compelled to do menial services for the king up till their death—this is the view of Kauśika.

D. V. adds: 'Insufficient food' in the above text means 'just that quantity of food, fit for their doing the menial services, spoken of'. The above text applies to Brāhmaṇa offenders only, three classes of whom, described above, shall have to be punished in three different ways, as specified above, according to the Ratnākara (p. 330).

Yama has laid down on the topics of crimes generally and theft specially: Corporal punishment has been prescribed nowhere for a Brāhmana offender, whom the king shall place within a guarded jail or cell (*gupte bandhane*) and feed. Alternatively, the king may tie him up with strings and cause him to do his menial services for a month or a half-month, after having carefully considered the gravity of his offence. He may even compel him to perform services, improper for a Brāhmaṇa (*vikarmāṇi*), (if the circumstances of the case so require).

D. V. adds: According to the Ratnākara (p. 374), the word 'guarded' (*gupte*), [added to the word 'jail or cell (*bandhane*)], implies 'fortified (*rakṣite*), whence no absconding of the convict is possible' and the word *Vikarmāṇi* (i.e. improper services) means '*ucchiṣṭa-mārjanādīni*' (i.e. cleansing the leavings of other persons' food).

Bṛhaspati (XXII. 26) says on this topic: A 'Brāhmaṇa) thief, who is in the habit of performing religious acts (*vṛtta*) and is also engaged in Vedic study, should not only be made to suffer a long-time imprisonment but should have also to compensate to the owner (of the stolen article) for his property, stolen (by him) and should additionally undergo expiatory rites.

Manu has thus defined the term '*vṛtta*' (used in the above text of Bṛhaspati): Honouring the teacher, abhorrence of bad acts, purification (of the mind and body), truthfulness, control of the sense-organs and performance of altruistic acts—all these constitute *vṛtta*,

Kātyāyana (1st verse=V. 479) says: Persons, other than Brāhmaṇas, if found unable to pay the fines, imposed on them, should be compelled to perform the king's menial services and those among such offenders, who are unable to do so, should be put in prison. So Kṣatriyas, Vaiśyas and Śūdras, unable to pay fines, should requite themselves by doing service (*Karmaṇā*) but a Brahmana offender in such cases shall be allowed to pay the fine in instalments.

D. V. thus comments on the above text: The Ratnākara is of opinion that the word *Karmaṇā* (i.e. by doing service) means, 'as compensatory for the payment of the fines, imposed on them but a Brāhmaṇa offender in such cases shall not have to compensate for the payment of fines in that fashion but should be allowed to pay them gradually. There is thus, according to D. V., a host of contradictory texts on the topic of compelling a Brāhmaṇa offender to do menial service and the settled conclusion, according to it, is as follows:

A Brāhmaṇa offender, sentenced to pay fines, if found rich enough to do so, shall undergo the penalty of the forfeiture of his property or of the payment of *paṇas*, beginning with one thousand, according to the prescriptions, laid down in different offences.[28] But if it is found that a Brāhmaṇa offender cannot pay the fines even by instalments, he shall then be forced to do menial services (for the king). But even in such cases of inability of the Brāhmaṇa offender, if he be possessed of good conduct and Vedic studies, he should be bound up either with fetters or with ropes and kept in a solitary jail and compelled to undergo expiatory rites for the purpose of his correction. But if no such correction occurs within a specified time, he should be banished from the territory, as a text of Āpastamba, to be quoted below, (on p. 260 of D. V. in the beginning of the topic of miscellaneous offences), has laid down that '*nāśa* i.e. destruction (of the offender's residence in that territory) is (to be ordered by the king) in cases of non-correction of the criminal (even after the specified period of imprisonment, along with expiation)'. The punishment to be inflicted on (poor and) ordinary Brāhmaṇas, (not having good conduct and Vedic study,) is that they shall be compelled to perform menial services or cleanse the leavings of other persons' food, not appropriate for Brāhmaṇas, according to the degree of their degradation. If a Brāhmana, either of the superior or of the inferior type, sent to exile, returns to his home territory uncorrected and indulges in bad acts as before, he should then

[28] D.V. reads a vague sentence after this viz. *sāhasādikañca nirdhanenāpi tena yathodayaṁ deyameva na tu karmaṇa pariśodhyam* which may mean, 'If such an offender is not wealthy enough to do so, he should have to make payment of fines, beginning from the first amercement, as imposed upon him (by instalments and never requite them by labour).

(in that extreme case) be kept imprisoned either up till the end of his life or so long as no correction occurs in his conduct.

So Bṛhaspati (IX. 25b-26) has laid down: If an alleged offender, completely (*jitaḥ*) defeated (i.e. adjudged guilty) by witnesses, document, inferential process (i.e. circumstantial evidence) or (*vā*) ordeals, declines to pay the fines (*damam*), imposed upon him (*deyam*), he is to be banished from the city (or the territory).

D. V. adds: The word *jitaḥ* in the above text refers only to "the person, adjudged guilty" for purposes of justice. So witnesses, documents etc. are only means of proof. The particle *vā*, meaning 'or', implies 'option of the acceptability (by the judge) of any one of the above-mentioned means of proof.' The word *damam* means 'the (pecuniary) punishment for the offence' and the word *deyam* means 'forming the subject-matter of the suit, i.e. decreed or imposed upon the offender'. These eight kinds of prescription, consisting of division and subdivision (of the several types of criminals with separate financial conditions and mental attitudes), constitute what is technically known as the *daṇḍa-mātṛkā*, i.e. the measurement or gradation of punishments. This line of reasoning is to be followed throughout (in criminal trials).

Here ends the first chapter of the *Daṇḍaviveka* by Śrī Vardhamāna on the general description (of the theory and practice) of punishments.

Chapter II

PUNISHMENT FOR HOMICIDE (or murder etc.)

Yāj. (II. 280) has laid down the following procedure to find out an unknown (i.e. absconding) murderer :

The sons and relations and the wives of the man, murdered by an unknown person, the last being in *liaison* with other men, should be separately interrogated.

D. V. adds: The sons etc. of the murdered man are to be asked, with whom he (the murdered man) had any quarrel (before his death).

The same authority has also thus indicated the way of putting questions to them: (The king's men) should one by one ask the persons, residing in the place of the murder, with what intent, whether acquisition of any woman, wealth or any (new) profession, and with whom the deceased had left the place.

Bṛhaspati (XXIII. 21 and 23) has said: The king should find the murderer out by means of inference from the previous enmity of the deceased (with any person), when the dead body of the murdered man is found but the murderer is not traceable. The royal officers should ask by means of conciliation and other devices the next-door and almost next-door neighbours, the friends, foes and relations of the murdered man (for that purpose).

Baudhāyana (I. 10.19-28) has laid down the following manner of punishments of the murderer after he has been traced out: Kṣatriyas and others, who have killed a Brāhmaṇa, should be put to death and should have also their entire properties escheated to the crown. But if such persons have killed members of equal or inferior castes, they will be penalised appropriately and in due consideration of their (physical and financial) capacity. (A Brāhmaṇa), killing a Kṣatriya, should offer a thousand cows to the king (*rājñaḥ*) for pacifying the enmity (*vairaniryātanārtham*). In cases of killing a Vaiśya and a Śūdra, (the Brāhmaṇa) should have to offer one hundred and ten cows respectively. A bull should have to be so delivered in addition in each of the above cases. Putting a woman or a cow to death has been equated (by some former authorities) with the murder of a Śūdra but the killer of a menstruating woman (*ātreyī*), a milch cow or a bull shall have to undergo the *cāndrāyaṇa* penance in addition to the prescribed punishment. Of these (three special classes), the killing of a menstruating woman has been equated with that of a Kṣatriya. Putting the following animals to death is equal in culpability with the murder of a Śūdra: Swan, *bhāsa*, *barhiṇa*, *cakravāka*,

valākā, crow, owl, frog, mongoose, serpent, wag-tail, *vabhru* type of mongoose and similar other lower animals (*ādīnām*).

D. V. adds the following long commentary to the above text: The commentary of Kapardin on the Āpastamba-sūtra says that "the phrase *vaira-niryātanārtham* means that 'the person, who is killed by another person, surely kills the latter (in the next life), to avoid which eventuality the latter (i.e. the murderer) should undergo penances by doing which he (the murderer) escapes death (in the next life) at the hands of the murdered person and the mutual enmity is thus pacified'." So the import of the above interpretation of the commentary on Āpastamba is similar to that of the above text of Baudhāyana and is also in harmony with a text of Uśanas-sūtra which lays down that '(a person), after having killed an indifferent (i.e. unmindful of his caste duties) Kṣatriya, becomes (automatically) purified', though it appears from the above text (of Baudhāyana) that in that case also the murderer has of course to undergo expiatory rites. Moreover, it is also apparent from the insertion of the word *rājñaḥ* (i.e. to the king) in the above text that the delivery of the cows to him amounts to punishment, which is in the form of (i.e. a substitute for) performance of the penances, like the shaving of the head of a raped Brāhmaṇa woman, prescribed by the authorities. So the above text has been quoted by the Kāmadhenu in its sections of *dharma* and of the fourth portion of *artha* and also by the Kalpataru in its *Prāyaścittakāṇḍa* and *Vyavahāra-Kāṇḍa* sections.

The word *ātreyī* means 'a menstruating woman' on the authority of the following text of Vaśiṣṭha: A woman, who has just taken the purificatory bath after her menses, is called an *ātreyī*, as she has then become a progeny (i.e. a procreating woman), as it were, of the god Atri. So the word *ātreyī* (literally) means 'belonging to the gotra of Atri'. The Mit. has, however, quoted a text of Viṣṇu, which is to the following effect: 'Or concerning a woman of the Atri *gotra* (i.e. lineage.)'

The words *nakula* and *vabhrunakula* mean 'a water mongoose' and 'a land mongoose' respectively. The portion of the above-cited text (of Bandhāyana), beginning with the words '*maṇḍuka-nakula*', as quoted by us, is found *in toto* in the Kalpataru, but the Kāmadhenu ends the above text with the words '*maṇḍuka-nakulādīnām*' (i.e. of *maṇḍuka* (i.e. frog), *nakula* (i.e. mongoose) and others). The digest of Halāyudha also reads similarly.

The Ratnākara (cf. p. 371) reads *tittirikā*[29] (i.e. partridge) instead of *Khañjarīṭi* (i.e. wag-tail) (read as *Khañjarīṭa* in the text portion of the above quotation) but it explains it wrongly. Halāyudha has read *pracālakā* for

[29] But Ratnākara reads '*tailika*' on p. 371

valākā and explained it as 'chameleon' (*Kṛkalāsa*). The word *ādīnām*, added at the end of the above text, implies 'other lower animals'.

The final conclusions (arrived at by us), regarding the above text, are the following:

(1) Kṣatriyas, Vaiśyas and Śūdras, killing a Brāhmaṇa, shall have their entire properties forfeited by the king, who shall then put them to death.

(2) When members of the above three castes murder a member of an equal or a lower caste, such as a Kṣatriya kills a Kṣatriya, Vaiśya or Śūdra, a Vaiśya puts a Vaiśya or a Śūdra to death and a Śūdra murders a member of his own caste, then the punishments to be inflicted upon them are according to their (financial) capacity and appropriateness such as the highest and other amercements or corporal punishments. This is the opinion of the Ratnākara (p. 372). But Halāyudha has inserted the words *uttama-sāhasādi-rūpaṁ śārīraṁ vā* (i.e. the highest and other amercements or corporal punishment) only between *anurūpam* (i.e. 'appropriate', in the second sentence) and *śūdra* (i.e. in the case of a Śūdra', in the third sentence) of the text of Baudhāyana. "Here *śārīra* (*daṇḍa*) (i.e. corporal punishment), as read by Halāyudha, means 'mutilation of limbs only' and not '*vadhaḥ*' (i.e. death proper'), otherwise the word *vadhaḥ* would have been definitely used in the above reading of the text (of Baudhāyana)." This is one line of interpretation. Another line is to the following effect:

As death also relates to the body, so the phrase *śārīradaṇḍa* (i.e. corporal punishment) also includes death sentence, as the soul cannot be killed, inasmuch as Nārada has said that 'corporal punishments extend from imprisonment to extinction of life' and also because 'mutilation of limbs' appropriately relates to the limbs only, owing to the literal interpretation of this phrase and the invariable connection of the body with the limbs and thirdly, on the authority of the text of Śaṅkha-likhita, laying down the following alternative punishments, viz. "Either corporal (punishment) or mutilation of limbs should be meted out" and lastly, owing to the separate inclusion of the body in the ten kinds of punishments, laid down in the following text of Manu (VIII. 125) and the corresponding interpretation of Kullūka Bhaṭṭa of "the punishment of the body being death proper": The genital organs, belly, tongue, hands, feet, eyes, nose, ears, money and the body.

So it appears (in spite of the above conflicting opinions) that (1) a person, who kills a person of the same caste, is to be put to death, as that is equitable and is also in consonance with the text of Āpastamba viz. 'Sentence of death is the proper punishment for murder'; (2) In cases of killing persons, not belonging to the murderer's caste, such as the murder by a Brāhmaṇa of

Kṣatriyas and members of other (lower castes), the dedication of cows as punishment, diminishing successively to one-tenths of the immediately preceeding ones, is justified on the same equitable principle; (3) The pecuniary punishments, ranging from the highest amercement in killing persons of equal or immediately inferior castes to the middle amercement in murdering men of very inferior castes (in comparison with that of the murderer), are also similarly justified; (4) The mutilation of one hand only out of the two hands (of the condemned criminal) and similar other corporal punishments, meted out with discretion, are also justified for the same reason, as the rule of such discretionary punishments, laid down by the verb *Kalpayet* (i.e. should devise), (occurring in the second sentence of the above text of Baudhāyana), is thus verified; (5) The option between imposition of fines and infliction of corporal punishments has been given (to the judge), having regard to richness or poverty and to the presence or absence of intention (or knowledge) (of the culprit) or to any other reasonable factor; (6) The prescription of punishments for offenders of the Kṣatriya and other lower castes having been given in the first sentence (of the above text), it necessarily follows that the phrase viz. *Kṣatriya-vadhe* (i.e. in case of killing a Kṣatriya) should be preceded by the phrase viz. *Brāhmaṇa-Kartṛke* (i.e. by a Brāhmaṇa, understood). All other portions of the above text are explicit. The above summing up is also the view of the Ratnākara (p. 372). So it follows that the respective punishments, which have been prescribed for the killing by Brāhmaṇas of a Kṣatriya and a Śūdra, are also to be respectively inflicted on them for the murder of an *ātreyī* (i.e. menstruating woman, just purified) and killing of an ordinary cow,[30] (the killing of a milch cow or a bull having been equated in the text with the murder of an *ātreyī*). If the cow or the bull, so killed, belongs to another person, the killer has also to give to the owner a substitute (of the killed animal) or pay to him its price. This will be elaborated (by us) in the chapter on *daṇḍa-pāruṣya* (i.e. assault).

Manu (IX. 280b) says on this topic: (The king) should instantaneously (*a-vicārayan*) put to death the stealers[31] of elephants, horses and chariots.

D. V. adds that the word *avicārayan* (i.e. instantaneously) means 'not making any delay in carrying out the punishment, when the fact of the commission of the above offence has been established'.

Bṛhaspati lays down the following special rule, concerning the persons,

[30] D. V. omits *govadhe ca* (i.e.' and (for the) killing of an ordinary cow'), which has been supplied by us.

[31] Manu reads °*hartṛṛśca* but D. V. reads° *hantṛṛśca* (meaning 'killers also'), which is inapplicable to the case of 'chariots' here.

dealing out the fatal blow (to another person) and not so dealing out respectively, among several men, engaged in assaulting an individual:

When several persons, having flown into rage, start beating another person, that very man of the group is to be singled out as 'the murderer', who gives the mortal blow. Only that person should be punished as prescribed (for murder) (*Yathoktaṁ*), while the beginner and the assistant (i.e. the aider and the abettor), who are also guilty, should receive half of the prescribed punishment.

D. V. adds that the word *yathoktam* in the above text means 'according to the legal prescription for the particular class of the victim'.

Yāj. (II. 231) has thus prescribed the punishment of an instigator: He, who instigates another person to commit a rash act (or crime), should be awarded twice the prescribed amount of punishment and he, who does so (i.e. instigates) (*Kārayet*) by stipulating that he will make payment of money to the actual culprit for committing the offence, should get four times the prescribed punishment.

D. V. adds: The word *Kārayet* means 'by verbal suggestion', according to the Ratnākara (p. 374, footnote 2) according to which authority (p. 374) the latter sentence means saying that 'I shall pay you (such and such amount of money) for committing this offence', and thus encouraging him to do the same, in which case four times the penalty, prescribed for the respective castes,[32] is to be imposed.

The interpretation of the Kalpataru is also to the wame effect.

Kātyāyana (vv. 832-834) thus analogically includes several other classes of persons within the above category (of aiders and abettors): The commencer, the assistant, the adviser as to the method (of carrying out the crime), the person providing asylum (to the real culprits), the supplier of weapons, the provider of food (to the above miscreants), the instigator of the scuffle (*yuddhopadeśakaḥ*), the inventor of the ways and means of doing away with the victim (*tad-vināśapravartakaḥ*), the winker (*upekṣākārī*), the false accuser (*ayuktaṣca doṣa-vaktā*), the approver (of the offence), the capable non-prohibitor (*aniseddhā Kṣamo*)—all these are involved in the commission of the offence and should, therefore, be punished appropriately and in conformity with their capacity (to pay the fines imposed or undergo the corporal punishments inflicted upon them).

D. V. adds the following comment: The assistant is a person, who apparently keeps himself aloof from (but really helps) the murder of a person

[32] D. V. reads *varṇot-karṣāt*, which has been translated here, but Ratnākara reads *anubandhotkarṣāt* (i. e. on account of higher criminality), which is the better reading.

by another person. The phrase *tad-vināśa-pravartakaḥ* means 'he, who causes the death of a person by administering poison and similar other (dangerous) things to him, there being no emergency of war', according to the Ratnākara (p. 374). But the Kalpataru interprets the phrase as 'he, who offers suggestions of the ways and means of murdering the victim.' The word *upekṣā-kārī* implies 'he, who, though incapable of forbidding the assailant, does not ask for the help of others and thus acts against the victim (*paradvārāpi niṣedhā-nānukulyā-kārī*)[33]. The phrase *ayuktaśea doṣa-vaktā* means 'he, who, though not summoned by the king, deposes against the victim in vile words'. But another authority has interpreted the first word of the above phrase viz. *ayuktaḥ* separately as 'not relevant regarding the murderer'. Halāyudha has, however, read *ayuktasya* for *ayuktaśca*, connected it with the previous word *upekṣā-kārī* and interpreted it as *anyāyyasya* (i.e. of the unjust action). The newly formed phrase thus means, according to him, 'one, who, even though capable of stopping the commission of the offence, winks at the conduct of the wrong-doer (and does not stop it)'.

Paiṭhinasī has said: The actual murderer, the adviser (i.e. the instigator), the supporter (*saṁ-pratipādakaḥ*), the encourager, the assistant, the adviser of methods (of committing the offence), the winker, though capable (of stopping the commission of the offence), the falsely deposing (witness) and the approver—all these persons should be compelled to perform penances and should also be punished appropriately and in conformity with their (physical and financial) capacity.

D. V. adds: Many other persons including those, who offer shelter to and thereby benefit the murderer, to be enumerated in the (following) chapter on theft, may be cited here (as aiders and abettors of this offence of murder).

Vyāsa says: After having definitely ascertained the murderer along with his assistants (*sa-sahāyam*) and friends (*sa-bāndhavam*), the king should put all of them to death by various tormenting methods.

D.V. adds a lengthy note: The word *sahāya* (in the above compound word *sa-sahāyam*) means 'a person, very intimate with the culprit' and the word *bāndhava* (in the above compound word *sa-bāndhavam*) implies 'those who, though knowing (full well) the perpetrator of the crime as such, do not avoid his company', according to the Ratnākara (p. 377). A murder may thus be of five kinds, (*a*) direct, (*b*) by offering advice, (*c*) by showing favour, (*d*) by

[33] D. V. has read the phrase as° *niṣedhā-nukūlyākārī*, which is wrong, meaning the opposite.

according permission and (*e*) by acting accidentally (and thus bringing about the murder), which topic has been dealt by us *in extenso* in our *Dvaita-viveka* with its divisions and sub-divisions. The heavier and lighter forms of expiation of persons, showing favour (to the murderer) or otherwise helping him, have been discussed there, having regard to their future confession of guilt or their relative aloofness from the actual offender and also in consideration of the seriousness or lightness of the offence committed. For example, a person, showing favour and an adviser are to perform three-fourths and half respectively of the penance, preseribed for the offence, while the penances to be gone through by an accorder of permission and an accidental committer are a quarter and its half and a quarter only of the penance, laid down. This having been settled for expiations, the respective punishments will also follow the same rule in the absence of express texts, laid down for them, inasmuch as both expiation and punishment produce the same salutary and corrective effects (on the offender's accomplices). So in both the above forms (of correction) intimacy with or aloofness from (the actual offender) of the latter class of persons is to be taken into account and the above-cited text of Paiṭhinasī has also given the advice of according equal position to both the forms of correction. The author of the Mit. is of opinion that an accidental killer (of a person) is to be awarded the punishment for rude behaviour (*ākrośana*) and similar other lesser offences only and not that for actual murder, as there is absence of pre-meditation (i.e. intention) on his part (to commit the murder); and so when the assailant accidentally meets death at the hands of another person, the latter is not to be punished (as a mur derer). But when the rude behaviour (on the part of the accidental killer) is justified, there is no consequent punishment even for that rude behaviour.

Bhavadeva Bhaṭṭa has said: When a culprit, having been penalised with admonition, fine or any form of corporal punishment, approrpiately applied to him for his specific offence, commits suicide by tying a noose around his neck, (the king or the judge) thereby incurs no fault whatsoever, as even though punishments enrage criminals, there is no valid reason for withholding them, for, owing to the Shastric injunction viz. 'One should not kill anybody', the agency of directly bringing about the death of a person is only prohibited. There is also no authority (of the judge) to administer on the accidental perpetrator of a crime a heavier punishment than admonition. Similarly, why should there be any prohibition (imposed on the judge) to inflict punishment on a convict, even though such punishment may arouse anger in him and indirectly result in his death (by committing suicide)?

D. V. continues: Thus a person, acting in accordance with the evil advice of another person, only incurs the sin of transgression of legal injunction

but invites no punishment on himself. Like the heaven of a sculptor (*sthapateḥ svargaḥ*), such persons have no intention of committing the murder, as acting under another man's advice, such persons have placed themselves in fiduciary relationship of the former (*tat-putrādi-sthānīyatvāt*) and their free will has thereby become subordinate to that of another person, like a horse, an elephant, a dog, a monkey and similar other beasts in the employment of their masters. So these masters only are liable to punishment, e.g. a father is to be punished for the delinquencies of the son, on the authority of the text of Nārada (cf. p. 223 of D.V.), quoted by us in the *daṇḍa-mātṛkā* (enumeration of punishments) section of the *daṇḍa-pāruṣya* (assault) chapter. So here also on equitable principle, the offerer of the evil advice and not the person, acting under that advice, is to be punished. This principle has been elucidated by us by quoting a text of Bṛhaspati in the *steya-daṇḍa-mātṛkā* (enumeration of punishments for theft) section [p. 85 (1st. quot.) of D.V.] (of the chapter on theft).

Such having been established as the rule of awarding punishmens according to the gravity of offences, the interpretation of the Ratnākara (p. 377) of the word *bāndhava*, occurring in the previously quoted text of Vyāsa, beginning with the words viz. *jñātvā tu ghātakam* [i.e. after having (definitely) ascertained the murderer etc.] is questionable. Non-desertion (of the company) of the perpetrator of a crime is no fault in itself, necessitating death penalty on such a person, as one, not aware of the crime, (committed by the actual offender), may keep company with the latter out of affection. So those *bāndhavas* (i.e. friends) only, who do not dissuade a criminal from the commission of the crime but (on the contrary) being led by a desire of partaking of the result of the crime (e.g. booty in a theft), themselves become guilty by encouraging the criminal to commit the contemplated crime, come within the purview of the punishment, prescribed in the above text of Vyāsa by reason of their culpability, equal to that of the criminal himself. Otherwise, the following interpretation of the Ratnākara (p. 382) itself comes into conflict with the above interpetation of the same authority:

In the text of Yama, viz. 'the murderers and the semi-murderers should be punished in relation to their respective bodies (*sva-śarīreṇa daṇḍyāḥ syuh*)', the phrase *sva-śarīreṇa daṇḍyāḥ* implies 'in consonance with their specific offences'.

Nārada (*ṛṇādāna* vv. 245-6) says on this topic: He who, having committed a reprehensible crime, confesses his guilt (*pratyāsattiṁ bhajeta*) i.e. himself speaks out before an assembly, is to be awarded half the prescribed punishment. But if the miscreant, having concealed his guilt, due to his wicked

nature, lives (i.e. gets scot-free), the members of the assembly become guilty and the culprit, (if afterwards detected), is accorded a severe punishment.

D. V. adds the following comment: The word *pratyāsattim* means *vinaya-kartṛ-sānnidhyam* (i.e. approaching the administrators of justice), i.e. he, who doing so, says (before the assembly) 'I have committed such and such crime' and thereby does not conceal his crime, is to be punished lightly. But he, who (does not do so and thereby) conceals his crime, gets heavier punishment. This is the meaning of the above two texts (of Nārada), according to the Ratnākara (p. 375). But Halāyudha has interpreted the above texts in the following manner:

He, who undergoes *pratyāsatti* which means *prāyaścitta* (i.e. penance), or himself reports to the assembly by saying 'I am the author of such and such crime. Please inflict the (proper) punishment upon me.' gets half of the prescribed punishment. But if he, who, by concealing his evil act, gets immunity from punishment but the members of the assembly are convinced of his crime by his outward signs and gestures, he is then to be punished severely, even if he might have committed a lighter crime.

The above two interpretations practically mean the same thing and are hence equally acceptable.

As the Ratnākara (pp. 370-375) has quoted the texts, such as *yaḥ sāhasaṁ kārayati etc.* (Yāj. II. 231, D.V. p. 75 above) (i.e. he, who instigates the commission of a crime) on the topic of the enumeration of the five kinds of crimes and as the texts of Yāj. and Nārada specifically mention crimes, so in spite of the non-mention of crimes in the above-quoted text of Kātyāyana, due to the following by the Ratnākara of both the texts (of Yāj. and Nārada), the specific and special punishments, prescribed above, are also to be inflicted in cases of theft and other crimes.

Here ends the second chapter, entitled 'Punishment for Murder', of the *Daṇḍaviveka* by Śrī Vardhamāna.

CHAPTER III

PUNISHMENT FOR THEFT

Steya i.e. theft means 'unjustified taking of other men's property'.

Manu (VIII. 332) has thus defined it: An act, done with force before the very eyes of guards, is called *sāhasa* (i.e. rash act) and theft consists in an act (i.e. taking of other men's property) surreptitiously, either before the very eyes of guards or not so (i.e. where there are no such guards).

D. V. adds the following comments: So the first kind is a *sāhasa*, as it, consisting of taking of other men's property, is committed by overpowering the guards and the second kind is called 'theft', which consists of two sub-divisions, viz. (1) theft, committed by defrauding the guards and (2) theft, committed in the absence of guards. Both these latter kinds fall within the category of 'theft', on the authority of the text of Kātyāyana, viz. Theft is said to be committed by non-disclosure (of the malpractice, involved in it) (*apahnave*). So the first kind of offenders (referred to in the very beginning of this commentary), though really stealers of other men's property, is termed a *sāhasika* (i.e. perpetrator of *sāhasa*), to be punished as such through the procedures of calling witnesses and undergoing ordeals. The second kind (i.e. the first subdivision of the latter category) is called an overt thief (*prakāśa-taskara*), having committed the theft before the very eyes of the guards (but without their knowledge). The third kind (i.e. the second sub-division of the latter category) is known as a covert thief (*a-prakāśa-taskara*) steal as they do the properties of sleeping, drunken, mad and afflicted persons without their knowledge, having taken advantage of their (temporary or permanent) absence of understanding. In the above-mentioned three kinds of cases, the stolen property should be taken away from the thief or *sāhasika* and returned to the real owner, the offence proclaimed among people and the offender should also be appropriately punished.

So Bṛhaspati (XXII. 5) says: The king's men should definitely ascertain the thieves by means of their association (with similar other condemned persons), the articles stolen (if realised later) and incriminating substances (if traced out) and then have the stolen articles returned to the real owners and get the offenders punished according to law.

D. V. adds: The above-mentioned factors of association etc. are only for the consideration of the king's men and are not individually conclusive in themselves, as they may not exist together.

Nārada, therefore, says: (The king's men) should carefully examine

whether the seized article has fallen on the ground from the hands of a person (other than a thief) and afterwards unintentionally picked up from the ground by another (innocent) person or has been thrown (on the road) by a thief.

D. V. adds: So it is established that the conviction of a person as a thief rests on visible as well as invisible means of proof.

Manu (IX. 262) further says: Having publicly proclaimed the specific offences of the thieves, the king should punish them according to their capacity (*sārānusāraTaḥ*),[34] physical (for undergoing the rigours of punishment) or financial (for paying the fines imposed).

D. V. adds: The punishment of persons, analogically described as thieves by the sages, has been laid down here, as analogical deduction and actual prescription amount to the same thing. There is, therefore, no return of the booty to the real owner, which has been neither specifically nor analogically laid down here.

Yāj. (II. 276) says: The person, who knowingly (*jānataḥ*) offers food, shelter, fire, water, advice, implements (of theft or murder) and expenses (of travel) to a thief or a murderer, should be punished with the highest amercement.

D. V. adds the following comments: Fire is intended for protecting the criminal from cold and water for quenching his thirst. Advice relates to telling (the criminal) the ways and means of committing (theft or murder). The addition of the word *jānataḥ* (i.e. knowingly) in the above text implies that one, offering unknowingly all or either of the above things to the thief or to the murderer, incurs no offence whatsoever (cf. Ratnākara, p. 337).

Manu (IX. 278) again says: The king should punish as thieves the following classes of persons also: Those, who supply fire (to a thief) (*agnidān*), offer him food, stealing implements or shelter or keep the stolen things in their custody (*moṣasya sannidhātṛṛn*).

D. V. adds: Nārāyaṇa has explained the word *agnidān* (i.e. suppliers of fire) as 'for the purpose of setting fire to anybody's house'. The Ratnākara (p.337) has explained the words viz. *moṣasya sannidhātṛṛn* as meaning 'creating circumstances, favourable to the intended stealing (*apahāra*)[35] of things' but it has been interpreted by Kullūka Bhaṭṭa in his commentary on Manu as 'the keepers in their custody of the *things, stolen by the thief*', as according to him the word *moṣa*, derived from the root *muṣ*, (i.e. to steal) means 'a

[34] Manu reads *aparādhataḥ*, which means 'according to the requirements of the specific offences'.

[35] Supplied from the quotation in the Ratnākara. D. V. omits the word *apahāra* and simply reads the phrase as *moṣaṅīya-dravyā-nukūla*°.

thing of a person, which is stolen by another, i.e. the stolen articles of a thief'. Nārāyaṇa has, however, interpreted it as 'those, even though knowing that a person will set fire to a house or commit similar crimes, lead the intending criminal to the place of the contemplated crime'. The Ratnākara (p. 337) adds that "the above text is to be construed only to those cases, where such persons do not have the ignorance (i.e. *do* possess the knowledge) (of the impending disaster)."

In continuation of the word *hanyāt* (i.e. should kill), used in an earlier text, Viṣṇu (V. 16-17) lays down: Those, who provide thieves with shelter and food, should be forcibly (put to death), except in cases of incapacity of the king (*anyatra rājāśakteḥ*) to check them.

D. V. adds: The idea, underlying the above text, is that when the king is powerless to suppress thieves, one, who offers food etc. to them for one's personal safety, commits no fault. (cf. Ratnākara, p. 338) But Halāyudha has read the above word *rājāśakteḥ* as *rājāsakteḥ* and interpreted the whole phrase (i.e *anyatra rājāsakteḥ*) as 'without any connection with (i.e. authorisation by) the king, i.e. when a person does so under the express order of the king for creating confidence in the thieves, he is not to be put to death.'

D. V. continues by saying that there is here no actual guilt on the part of those, who offer food etc. to the thieves, but on the analogy of the offence of theft, such actions only favour the commission of the above offence and hence such punishments have been prescribed (as precautionary measures). Let that be so. But variation of punishments has also to be made in accordance with the gravity of the offence so committed (by offering such assistance to the intending criminals) and the actual offence, on the logic, propounded (by us) in the concluding portion of the previous chapter on murder and also on the established principle of law. It is also not (ordinarily) proper to inflict the same punishment to the house-breaker and to the offerer of food to such a criminal, where also heavier punishment may have to be inflicted (on the offenders), only when they repeatedly commit the offence, spoken of.

Nārada (*Sāhasa* V. 19) says on this topic: Those persons, who are strong enough to get the thieves being arrested, do not do so but on the contrary (indirectly assist them) by offering food and shelter to them, when they approach them, share the guilt of the latter equally.

Manu (IX. 272) also says: The king should punish as thieves the officers, who have been placed in charge of protection (of the people) and the villagers, (*sāmantān*) who have been specially advised (*deśitān*) (by him) to do so but who remain indifferent (*madhyasthān*) to the inroads of the thieves.

D. V. adds: The word *sāmantān*, having been derived from *samantat*[36] (meaning 'near by' or 'surrounding'), means 'villagers', the word *deśitān*[37] means 'advised to protect' and the word *madhyasthān* means 'indifferent'.

Kātyāyana says: Those, who instigate and order the thieves or offer shelter to them and conceal them, are to be awarded the same punishment as the thieves themselves.

D. V. adds: Such analogical instances are to be reckoned with in murder also, as Yāj. (II. 276) contains the words *caurasya hantur veti* (i.e. of the thief or of the murderer). The same authority (i.e. Kātyāyana) (V. 827) adds in continuation of *caurāṇam* (i.e. of the thieves):

The purchasers and the donees of the booty of the thieves and their (i.e. of the thieves) concealers are to be punished equally as the thieves themselves.

Manu (VIII. 340) says: The Brāhmaṇa, who receives (*lipseta*) wealth (*dhanam*) from the hands of a thief (*adattādāyinaḥ*, i.e. from an unlawful receiver) even by officiating as a priest for or teaching (such a person), is as bad as a thief (*yathā stenas tathaiva saḥ*).

D. V. adds: The verb *lipseta* (literally meaning 'desires to receive') is to be considered as an archaie usage (*ārṣa*) like the word *nididhyāsana*, thus conveying no desiderative sense in spite of the addition of the desi: derative suffix (*san*) to its root (viz. *labh*). The word *dhanam* (i.e. wealth) indicates 'such wealth as is known (by the Brāhmaṇa recepient) to be others' wealth (and not of the donor's wealth).' Here also, on the reasoning of the concluding portion of the chapter on murder and also on the insertion of the correlaties *yathā* and *tathā* in the text, there is an analogy only of a thief on a purchaser or a donee of stolen property and there is no actual theft. The analogy holds good in receiving punishments only but does not apply to performing penances. So it is to be understood that a person, purchasing or receiving (as gift) gold, originally belonging to a Brāhmaṇa owner, from the hands of a thief, does not run the risk of becoming a grave sinner.

In the following text of Yāj. (II. 269) there is no allegation of theft here but the aversion of the person, accused of theft, due to association etc. (with the thief), to face trial really confirms his thievish character and so disgorging by him of the property stolen is justified:

He, who, having been arrested on suspicion of theft, does not exonerate

[36] Kullūka interprets *sāmantān* as *sīmānta-vāsinaḥ*, i.e. persons, residing on the borders of a village. 37 Manu reads *coditān*, meaning the same thing. Ratnākara's (p. 339) reading and interpretation of the above two words are the same as those of D.V.

himself, should be compelled to disgorge the stolen property (or its value) and also be punished as a thief.

But if that establishment of the thieivsh character of such a person, having been nullified, turns out to be a mistake, the king should then follow the procedure, suggested by Katyāyana (V. 821) and laid down below:

If the article stolen is actually recovered later from a person other than one, previously suspected of its theft, the king should cause his officers, engaged in the detection of the thief, to make over twice the amount (already extorted by them from the suspected person) to the latter.

Bṛhaspati (XVI. 9) says : The master (*svāmī*) only is to be held guilty (*aparādhnuyāt*) (and not the servant) for an evil act (*aśubham karma*), committed for the benefit of the master (*tadartham*) by the servant, employed by him.

D. V. adds: The phrase *aśubham karma* (i.e. an evil act) includes 'theft and similar other crimes'. The mention of the word *svāmī* (i.e. master) emphasizes the guilt of the master only and not of the servant. According to the Kalpataru, the word *aparādhnuyāt* means 'becomes punishable'. This topic is to be found (discussed in greater details) in the chapter on assault etc. below. The servant's immunity from punishment has only been indicated here, though the servant would certainly incur sin, as has been elaborated (by us) in the concluding portion of the chapter on murder above.

The same authority (i.e. Bṛhaspati) (XV. 13) has thus classified the servants: The armed servant belongs to the highest class, the servant, carrying the ploughshare (of the master) (i.e. the farmer, employed by him) is of the middling type, while the load-carrying and the domestic (menial) servants belong to the lowest category.

Yāj. (II. 36) says: The wealth, stolen by a thief, should be made over by the king to the residents of the locality (where the theft has been committed). The king, not doing so, incurs the same sin as that (*tasya yasya tat*) incurred by the thief himself (in stealing the wealth).

D. V. adds that according to the author of the Mit., the phrase *tasya yasya tat* (occurring in the above text) means: 'If the king recovers the wealth from the thief and enjoys it himself, he then incurs the same sin, as accrued to the thief on account of his stealing it'.

Kātyāyana (V. 816) says on this topic: (The king) should restore with efforts the stolen article itself (*svarūpam*), otherwise he shall have to pay its price to the real owner (in case of his failing to recover it from the thief). The king, not doing so, becomes sinning.

The same authority (V. 817) continues: If the (real) thief has been arrested but no stolen article has been recovered from him, (the king) should either

pay himself the real owner the price of the stolen article or hand over the thief to him according to his (the king's) discretion.

D. V. adds that this discretion is to be so exercised that the thief really makes over the price to the owner.

Āpastamba (II. 26.4-8) lays down (the following special procedure), in case the thief is not at all traced out: (The king) should post pure, truthful and good persons in villages and towns for the protection of his subjects. The men, employed by them, should also possess the same qualities. In towns, the border areas with a radius (on all sides) of a *yojana* (i.e. about nine miles) and in villages, such areas with a radius (on all sides) of a *krośa* (i.e. a little over two miles) are to be protected (by them) from (the depredations of) the thieves. The above men are to compensate for whatever is stolen from the above areas.

Kātyāyana (V. 813) says: In case of non-traceability of the thief, the king should cause the thief-catchers (*caura-grāhān*) to pay the price of the property, stolen from individual houses (to their respective owners) and (in the absence of such thief-catchers) the guarding officers and the local headmen (*dik-pālān*) should be compelled to do so.

D. V. adds: A thief-catcher (*caura-grāha*) belongs to a particular class of men, employed (by the king) to search for the thief in almost all places, while a local headman (*dik-pāla*) is one, engaged (by the king) (to look over) all the directions (of a particular locality), who, according to the Mit., is known as the *sthāna-pala* (i.e. guard of the entire locality) and who, according to the Ratnākara (p. 341), is popularly known as the *deśa-pati*, discharging the same function. The services of this latter class are to be requisitioned in villages without regular watchmen.

Yāj. gives the following directions to be followed (by the king) for places without any watchman or headman:

If the theft has been committed within the borders of a village or (*vā*) the foot-prints of the thief are seen to have left its borders, the village (i.e. the headman or the residents of the village) (will have to pay singly or collectively), or (*athavā*) when the theft has been committed within a group of villages, situated *krośas* (i.e. many miles) apart, the surrounding and adjacent five or ten villages (are to compensate the owner of the property stolen).

D. V. adds the following comments: The particle *athavā* (i.e. or), used in the above text, implies option and so where there is a headman of the village, he is to pay, on the authority of the following text of Kātyāyana (V. 814a):

The headman (or superintendent) of the village is to be made to pay for the article, stolen within the borders of a village.

D. V. continues: In the absence of the headman, the village (*grāmaḥ*) will have to pay, the word *grāma* here implying 'the residents of the village', just as the sentence viz. 'the village (meaning 'the villagers') has fled'. This prescription is to be followed only in cases, where the footprints of the thief are found to have left the borders of the village but if such footprints are seen to have entered another village, its headman or residents will then have got to pay. But if the theft has been committed (in a house situated) in an open space, more than two miles distant from the surrounding many villages and the footprints of the thief have been effaced, to some extent, due to the traffic of pedestrians, then the surrounding, more or less, five or ten villages shall have to pay (the value of) the stolen article, as made out (by its owner) This procedure is to be followed in cases of unintentional murder also, on the authority of the text of Yāj., beginning with the clause viz. *ghātite' pahṛte doṣaḥ* [i.e. fault arises in killing (a person) or stealing (from a person)].

Viṣṇu (III. 66-67) says: (The king), having recovered a stolen property (from the thief), should give the entire amount (*sarvam eva*) to the real owner, irrespective of any caste. Not having so recovered, he should make good the loss of the real owner from his own treasury (*sva-koṣāt*).

D. V. adds: The phrase *sarvam eva* (i.e. the entire amount) implies that no *king's share* is to be retained by the king as in the finding of a treasure trove. The word *sva-koṣāt* (i.e. from his own treasury) has been added here in view of the maxim viz. "Sin accrues (to the king), who does not compensate (the person, whose property has been stolen)." So not having succeeded in making the other person (i.e. the thief) give it back, the king should himself pay its price (to the real owner).

Vṛddhamanu says on this point: If there arises any doubt about the quantity of the thing stolen, the price of which is going to be paid back to the owner, the latter is to make (before the king) a solemn affirmation regarding or prove [by friends (*bandhubhiḥ*) (i.e. by friendly witnesses)] his claim to, a specific quantity of the thing stolen.

D. V. adds: The word *bandhubhiḥ* implies human proofs (such as witnesses etc.), as an alternative to solemn affirmations i.e. oaths, (which are superhuman proofs).

Here ends the sub-chapter on the general procedure of dealing with (cases of) theft.

PRAKĀŚA-TASKARA—S (Overt thieves)

The merchant or business man, included within the category of overt thieves (*prakāśa-taskara*), is of two kinds, viz. (*a*) a shop-keeper, who buys articles

(from others) and sells them (to others) and (*b*) a manufacturing trader, such as a goldsmith and a leather-worker. The selling businessman is also of two kinds, viz. (*a*) a transactor of spurious, under-weight or adulterated articles and (*b*) an actual adulterant of articles. The former class of these two belongs also to two categories viz. (*a*) not moving (i.e. stationary) (*b*) moving (or peripatetic). So merchants, comprising all the above kinds, constitute four classes.

Yāj. (II. 244) has laid down the following punishment of the *stationary* (i.e. not moving) category, transacting in spurious and adulterated articles: A trader, who steals from an intending purchaser, one-eighth portion (of an article, sold by him), by (false) measures (*mānena*) or balances (*tulayā*), is to be fined two hundred (copper coins) and in cases of stealing more or less than that amount, the fines will be correspondingly increased or decreased than that, prescribed above.

D.V. adds that the word *māna* (i.e. a measure) is a *prastha*, a *droṇa* etc. and that the word *tulā* (i.e. a balance) is used in weighing gold and similar other articles, and that the above prescription also includes a *pratimāna* (i.e. a standard weight), as is evident from the following text of Kātyāyana (V. 812).

A trader, practising (fraud upon his customers) by using balances, measures (of corn) and measures of capacity that are imitations of true ones or not so, is to get the (punishment of) the first amercement.

D. V. adds the following comments: A *pratimāna* (i.e. a measure of capacity or weight) is known as a slab of stone, marked with the royal seal, for weighing gold and other commodities. Fraud is implied in all the above kinds of transactions, as is evident from the use of the epithet viz. *pratirūpaka-lakṣitaiḥ* (i.e. as is evident from the imitation weights etc., used by the trader) in the above-quoted text of Kātyāyana. The eighth portion is of the (real) weight of the article sold. Kātyāyana's prescription of the first amercement as punishment (for stealing the eighth portion) and Saṅkha-likhita's prescription of greater and lesser punishments in *sāhasas* (i.e. crimes) are to be reconciled by proportionately fining (the trader for his defrauding the customer) to the extent of more or less than the eighth portion (of the real weight of the article sold).

In the following text of Śaṅkha-likhita: "Corporal punishment or mutilation of limbs is the proper penalty for using false balances, false measures and false weights", the corporal punishment consists in shaving (the head of the culprit) and the mutilation is of the ears and similar other (less useful) limbs and the Ratnākara (p. 296) says that the above

option[37a] (*vikalpa-vyavasthiti*) (between corporal punishment and mutilation) is to be exercised in consideration of the comparative seriousness or otherwise of the offence committed.

Though in the above text (of Śaṅkha-likhita) the culpability of the writer of a (forged) document and the preparer of a (false) horoscope (who is an astrologer) has not been laid down (*doṣe Snukte Spi*)[38], as has been done along with that of the users of (false) balances and measures in the following text of Vyāsa, viz. "By the use of a counterfeit balance or a false measure or by forging a document or preparing a false horoscope", the punishment (of the fine) of two hundred (copper coins) is to be imposed in these two cases also on equitable grounds, as the Ratnākara (p. 294) has first quoted this text (of Vyāsa) and then cited the above-quoted text of Yāj.

While interpreting the following text of Manu (IX. 287):

"He, who sells for the same price the same kinds of commodities of superior and inferior qualities or charges higher price for the same quantity and quality of a sold commodity (from a customer in comparison with that, charged by him from another customer), is to be fined the first or the middle amercement," the Ratnākara (p. 294) has said that the former punishment (i.e. the first amercement) and the latter punishment (i.e. the middle amercement) apply to the above two kinds of cheating (customers).

But Halāyudha has otherwise interpreted the above text (of Manu) in the following manner:

"While engaged in a transaction of exchanging commodities, one, who exchanges his lower-valued article with another person's higher-valued one, or while engaged in a transaction of sale, one, who, knowing the purchasing intention of a particular person, sells him a less valued commodity for an exorbitant price, these two classes of persons are to be punished with the fine of the first or middle amercement in consideration of the pecuniary condition (of the offender) (or of the value of the commodities, thus exchanged or sold)." (cf. Ratnākara, p. 294).

D. V. says that this[39] latter interpretation (by Halāyudha) contains an option (for the king) to inflict the first or the middle amercement and thus provides for unjust (because equal) punishments (for both the above classes of offences). Such apparently unjust character of the punishments may be justified, if we take into consideration the fact of the stolen character of the article or exorbitant nature of the money (which is going to be exchanged

[37a] *Vikalpa°* has been misprinted as *vivalpa°* in D. V.

[38] *Doṣe* S *nukte* S *pi* has also been misprinted as *Doṣe* S *nukto pi* in D.V.

[39] D. V. wrongly reads *pūrva-vyākhyāne*, which means 'in the former interpretation'. It should be *uttara-vyakhyane*.

or charged as price). Otherwise, such punishments may only be attributed to the fate of the criminal.

But Kullūka Bhaṭṭa in his commentary on Manu has interpreted that the option is to be exercised in the cases of the first and old offenders respectively. Nārāyaṇa (another commentator of Manu) has, however, said that 'he, who behaves in a crooked way (*viṣamam*) with the straight-forward (*samaiḥ*) persons, should be awarded the first amercement and he, who charges a higher than usual price (of a thing from a customer), is to be fined the middle amercement.'

Manu (IX. 291) again says: He, who sells spurious seeds and he, who removes seeds sown (*bījot-krośṭā*) from a field (and plants them elsewhere, according to Halāyudha) and he, who transgresses the established law and customs (according to Medhātithi) (or breaks the boundary walls or pillars of towns or villages, according to Kullūka)—all these persons are to be punished with death after mutilation of their limbs.

D. V. adds: The Ratnākara (p. 294) has interpreted *bījot-kroṣṭā* as 'one, who steals the seeds sown (by another person) by digging them up' and Kullūka Bhaṭṭa has explained the word as 'one, who, having mixed some good seeds with a greater quantity of bad seeds, sells the mixed quantity as[40] uniformly good seeds'. But Nārāyaṇa has interpreted it as "one, who effects improvements in the seeds at the time of their sprouting for getting a higher price (by selling them)." Miśra (i.e. Vācaspati Miśra) has, however, explained the above word as "one, who forcibly carries away the entire standing crops, sown by another man in his field (but not yet ripened)." These two types of criminals, (viz. the seller of spurious seeds and the stealer or the adulterant of seeds or the thief of standing unripe crops) should be put to death after having effected mutilation of their hands, legs, ears, nose etc.

Yāj. (II. 250) says: If a person, after having collected various kinds of merchandise, sells them it at improper (i.e. exorbitant) prices, he should get the optional punishment of the highest amercement (according to the discretion of the judge).

Manu (VIII. 399) lays down: The king should forfeit the entire sale-proceeds of a person, who sells, out of greed, the (extremely valuable) articles, known to be enjoyed by the king only and also those commodities, forbidden by him to be sold.

D. V. adds: The former kind relates to those articles, which are pre-eminently known to be fit for the king's enjoyment only, such as elephants,

[40] D. V. wrongly reads "*pūrvam* idam *sotkṛṣṭam*" for "*sarvam* idam *sotkarṣam*, as correctly written in Kullūka's commentary on the above text.

horses etc. and gems, pearls etc. But (Kullūka) in his commentary on Manu has qualified these (forbidden) things as 'indigenous'. This latter kind concerns itself with rare qualities of rice and other cereals, the sale of which outside the territory has been prohibited by the king. But the merchants, who sell them out of greed to foreign countries and the former class of merchants will have their entire sale-proceeds confiscated to the crown.

Yāj. (II. 261b) also says on this point: The commodities, prohibited for being sold and those, fit only for the king's consumption, if sold (to ordinary persons or outside the territory), will go to the king.

D. V. adds that the king shall forfeit (all these things), without paying any prices whatsoever (to the merchants).

Śaṅkha-likhita have laid down the following rule in continuation of the punishments, involving the (entire) body or the limbs (of the culprit): (Such punishments are to be prescribed for persons) in selling forbidden articles.

D. V. adds: This (severe) prescription (of death sentence or mutilation of limbs) can be reconciled by the special case of the merchants, having already spent the sale-proceeds (of such articles). So, according to the Ratnākāra (p. 299), such (drastic) punishment may justifiably be inflicted (on the offending trader) who has sold things, fit for the king's use only, when he is not able to disgorge the sale-proceeds (to the king).

Manu (VIII. 400) and Nārada (cf. *Sambhūya*° V. 13) have laid down the following punishment for *the moving* (or *peripatetic*) category of traders: If the trader avoids the fixed places for paying the sales-tax or transacts business in inappropriate hours or makes. false statements regarding the number (or quantity) of his commodities, he should be made to pay the penalty, amounting to eight times the prescribed sales-tax (*atyayam*).

D. V. adds the following comments: If the trader goes by an unfrequented path and thus avoids the octroi barriers, fixed by the king to collect the sales-taxes on a river-bank, in a town, on a hill and similar other (prominent) places, or transacts his business at night or makes false statements regarding the number and quantity, i.e. gives a reduced number or amount, of his commodities to avoid the (just) payment of his sales-tax, he is then to be fined eight times the value of the transacted articles, according to the Ratnākara (pp. 295-296). But (Nārāyaṇa) Sarvajña has thus otherwise explained the above text:

It is apparent that eight times of the king's due (as sales-tax) are to be realised from him as fines, owing to the present context, concerning such tax

only and the word *atyayam*, used in the above text, therefore, means 'what is payable to the king as the sales-tax.'

Viṣṇu (III. 31) says: (A trader), who avoids the sales-tax (i.e. octroi) barriers, shall have his entire property forfeited (by the king).

D. V. adds that this punishment of the forfeiture of the entire property should be inflicted only when the trader repeatedly avoids the sales-tax offices and there is, therefore, no conflict of this text (of Viṣṇu) (with the previously quoted text of Manu and Nārada).

The same authority i.e. Viṣṇu (III. 29-30) further says about the amount of sales-tax to be paid by a stationary or peripatetic trader, who has come to such offices: (The king) should realise as his revenue one-tenth of the profit, accruing from the sale of indigenous articles and one-twentieth of the profit from imported ones.

Gautama (II. I.27-29) has laid down the following special rule regarding perishable articles in connection with the king's dues: (He) shoud be always alert in collecting one-sixtieth part (*ṣaṣṭiḥ*) of the esculent roots, flowers, medicinal herbs, honey, meat, grass and fuel, as these things are perishables (*Kṣaṇa-dharmitvāt*).

D. V. adds: The word *ṣaṣṭiḥ* means 'ṣaṣṭitamabhāgam' (i.e. one-sixtieth part) and the word *Kṣaṇa-dharmitvāt* means '*Kṣaṇa-vināśa-dharmitvāt*' (i.e. owing to their nature of perishing instantly), according to Halāyudha. The Ratnākara (p. 302) is also of the same opinion. The Kāmadhenu has read it more explicitly as *tat-ksana-dharmitvāt*, meaning the same thing. But (Vācaspati) Miśra has read *ṣaṣṭhaḥ* for *ṣaṣṭiḥ* and explained it as 'one-sixth portion is to be realised by the king as his due (from such traders)'.

Baudhāyana (I. 10.13-15) has thus described the procedure of realising the king's dues as sales-taxes from articles, extracted from the sea after the appropriation (by the king) of the best ones of the lot:

The sales-tax of marine articles (*sāmudraḥ*) after the appropriation of the best ones (*varam rūpam*) is at the rate of ten *paṇas*[41] (i.e. copper coins) in articles, valued a hundred *paṇas* and the similar judicious principle (*dharmyam*)[42] is to be followed in other things (collected from places other than the sea), after having appropriated the most valued articles according to their respective worth but without causing loss to the things themselves (*anupahatya*).

[41] D, V. wrongly reads °*palam* for° *paṇam*, as appears from its comment and also supported by printed Baudh. reading °*paṇam*.

[42] D. V. wrongly reads *dharme* for *dharmyam*, which seems to be the proper reading, as D. V. itself has explained the word in its comment as *dharmāt anapetam* (i.e. not deviating from justice).

D. V. adds: The word *sāmudraḥ* means 'articles, extracted from the sea' and the word *varam rūpam* is 'in connection with pearls etc'. Of all other things, imported from outside territories and likely to fetch huge profits, the best ones are to be appropriated (by the king), according to their intrinsic worth. The word *anupahatya* implies 'without causing loss to the commodities of the trader.' But Halāyudha has read *apahatya* for *anupahatya* and explained it as 'having realised.'

Vaśiṣṭha (XIX. 37) has laid down the following exceptions to the collection of sales-tax: (The sages) have quoted the following verse of Manu as examples (of non-realisation) of sales-tax: No sales-tax is to be realised from an article, worth less than a *Kārṣāpaṇa* (*na bhima-kārṣapaṇam asti śulkam*), from the profit, accrued from an industry, from the sale of infant (animals, such as calves) (*śiśau*), from an emissary (*dūte*), from the collected alms of a beggar, from the residues, (*Kṛtāvaśeṣe*) left in the coffers, from a *Srotriya* or from a wanderer (or recluse) or from articles, being brought for the performance of sacrifices.

D. V. adds the following long note: The word *bhinna-kārṣāpaṇam* has been formed (by means of a *Bahuvrīhī* compound) from the sentence '*bhinno* (meaning '*nyūnah*', i.e. less than) *Kārṣāpaṇo* (*mūlyam*, i.e. price) *yasyā saḥ* and so the tax on such an article is similarly called. No tax is, therefore, to be realised from an article, worth less than a *Kārṣāpaṇa*. But Halāyudha, interpreting *bhinna* as *mūlya* (i.e. price), has explained the compounded word as 'the price, amounting to a '*Kārṣāpaṇa*'. In fact, the plain meaning of the above is that if the chargeable tax (on an article) is less than a *Kārṣāpaṇa*, no sales-tax is to be realised. But owing to the affixing of the first case-ending to this word and of the seventh case-endings to all other words (of this text), the word *vikrayaparatāyām* (i.e. while selling an article) is to be supplied to this first word for purposes of grammatical construction to help explanation. The word *śiśau* means 'in the sale of infant animals, such as calves' and the word *dūte* implies 'from an article, being conveyed by an emissary to be offered as a present (to another king) or received by him as a mark of respect elsewhere'. The word *Kṛtāvaśeṣe* denotes 'from the residues, left in the coffers of a satisfied merchant'. But Halāyudha has said that no sales-tax is to be charged from an infant, an industry, an emissary and from merchants.

Śaṅkha-likhita have laid down: No tax (*aśulko*) is to be realised from citizens, belonging to all the castes, Brāhmaṇas and non-Brāhmaṇas alike, in respect of articles, carried on their shoulders (i.e. of lesser value).

D. V. adds that the word *aśulkaḥ* means 'no realisation of taxes'.

Nārada (cf. *prakīrṇaka* V. 38) says in continuation (of the special privileges)

of a Brāhmaṇa: (These are) crossing a river (by a ferry boat but) without paying the requisite fare and alighting (from the boat) first (of all the passengers) and non-payment of sales-tax (to the king) for commodities (*paṇyeṣu*) (purchased by him), unless he plies business with them.

D. V. adds: There is a different reading of *tareṣu* for *paṇyeṣu* in which case it means 'in respect of clothes etc., carried across a river (by a ferry boat)'.

Yāj. (II. 240) has thus laid down the punishment of merchants, *manufacturing* counterfeit commodities: Those, who counterfeit or use counterfeit articles such as balances, royal documents (*śasāna*), (weights) and measures and minted coins (*nāṇaka*), are to be punished with (the fine of) the highest amercement.

D. V. adds: A balance has been described above. *Nāṇakas* are minted coins, such as *Kārṣāpaṇa*, *śatamāna*, *kaṭanka* etc., i.e. coins, made of gold and marked with royal seals. According to the Mit., these include a *niṣka* and other (gold) coins. He, who counterfeits (i.e. manufactures) these coins or uses such coins, manufactured by others, as genuine ones, even though knowing full well of their spurious character, are to be awarded the highest amercement. Such counterfeiting may be made by manufacturing the coins, weighing more or less than the (king-made) coins, current in the country or mixing the basic gold (of the coins) with baser metals such as copper. All this additional statement is partial paraphrase of what has been already said above in the topic of selling forged or spurious articles.

Manu (VIII. 403) says: All the balances, weights and measures (of the traders) are to be properly guarded and checked and re-checked every six months.

D. V. adds that all this checking is to be done (by the king's men), lest they be made counterfeits in the meantime.

Good persons, devoid of avarice, shall be entrusted (by the king) with this task (of checking the balance etc.), as laid down by Śaṅkha-likhita: The place of registering and evaluating (genuine) balances, weights and measures, appropriate to weigh and measure the various commodities of the country, shall be under the direct supervision of trusted persons.

Yāj. (II. 241) says: The examiner of *nāṇaka* coins, who pronounces a genuine coin as spurious or gives the verdict of genuineness to a spurious one, shall be punished with the highest amercement.

D. V. adds: According to the Ratnākara (p. 297), this punishment (of the highest amercement) is to be inflicted in cases, where there is a wrong appraisal (by the royal officer), due to intention, in the absence of which the officer, so charged, will get a lighter punishment. Here it appears that though absence of intention (ordinarily) exonerates such defaulting persons, yet

they are certainly guilty (to some extent), simply because of their volunteering to do this work inspite of their incapacity (*parīkṣaṇā S samarthasya*)[43] to do so and punishment has been prescribed in consideration of this special fact.

Yāj. (II. 249) further says: Though (royal officers), who in a body fix tormenting wages for or prices of (commodities), produced by working artisans and artists (*Kāru-śilpinām*) by (arbitrarily) increasing or decreasing them, are to be fined a thousand (copper coins).

D. V. adds: The 'artisans' (*Kāravas*) means 'clay-modellers, i.e. idol-makers' but according to the author of the Mit. it means 'washermen etc'. So those, who impose, out of greed for improper gains wages (or prices) on the above classes of persons, which entail hardship (on those workers) and those, who assembling together, increase or decrease the wages (or prices), previously fixed by the king himself, should be so punished.

Manu (VIII. 402) has prescribed the following time as proper for fixing the prices of (or wages for) the commodities: The king should himself (*pratyakṣam*) fix the prices of (or wages for) the (various) commodities after the lapse of every five days or every fortnight.

D. V. adds: The fortnightly fixation (of prices etc.) is of articles, sold in a long period and the fixation after every five days is for things, exposed for ready sale, as the above two circumstances naturally require. But Kullūka in his commentary on Manu explains the above text by saying that 'the system of fixation of prices at five days' intervals is of things with fluctuating prices and the fortnightly system applies to commodities with almost fixed prices.' D. V. continues by saying that the insertion of the word *pratyakṣam* (i.e. himself) has been made to emphasize the king's duty (to do the same, if he finds leisure), otherwise he should have it done by trusted officers, which option has been laid down by the previously quoted text of Śaṅkha-likhita.

The same authority (i.e. Manu VIII. 401) has also prescribed the procedure of the above system in the following manner:

The king should authorise the transactions of sale and purchase of all kinds of grains (*sarva-śasyānām*) after having taken into consideration their import (*āgamam*) and export (*nirgamam*) charges, necessary depreciation (in value or quantity) (*kṣayaḥ*) incidental expenses (*sthānam*) and profit (*vṛddhiḥ*), accruing from them.

D. V. adds: The word *śasyam* (in the above word *sarvaśasyānām*) is either illustrative or it denotes a plural number and so includes grains and other

[43] D. V. has misprinted the above word as *parīkṣaṇā-samarthasya*, omitting the avagraha S.

things such as *kaḍāras*. So there are five matters to be considered, (while fixing prices of) commodities (exposed for sale).

Nārada also says: Everything, fit to be sold or purchased, is a commodity, which may be fit for either counting, weighing or measuring and may also be tested by its action, beauty or brightness.

D. V. adds the following comments: Countable commodities are such as betel-nuts, or conch-shells used as legal tender (*kapardaka*), according to Halāyudha. Weighable substances include gold and similar other (metals). Measurable things are grains of rice and other (cereals). Horses, she-buffaloes and similar other beasts of burden are classified (as good or bad commodities) by their actions, viz. carrying loads or giving milk. Prostitutes or female slaves[44] are also commodities, kept or purchased by reason of their personal beauty. But according to Halāyudha, commodities, purchased in consideration of their beauty, are pictures, clothes etc. Pearls, gems and jewels are bought for their inherent beauty, i.e. lustre (*śriyā dīptyā*).

D. V. now continues explaining the previously quoted text of Manu (VIII. 401) in the following words:

The word *āgama* means 'entrance into a country of saleable commodities from another country, situated far or near and easily accessible or inaccessible,' as the case may be. The word *nirgama* means 'exit of the indigenous produce of a country to another country in like manner'. The word *sthāna* implies 'the incidental expenses of food (and carriage) of the persons, (employed to bring to the country the commodity in question) for a long or a short period'. *Vṛddhi* and *Kśaya* consist in 'the considerations of the profit to be derived (by the trader) over the cost-price (of the commodity) and the depreciation (in case of deferred sale) or loss to be suffered by him (from the price on the instant sale of the commodity)'. So the king should take all these factors into account and so order the transactions of sale and purchase of commodities by the trader and the customer respectively that none of them derives any improper gain or suffers any undue loss.

Yāj. (II. 252) has thus described the proper gains of a seller (of commodities): An immediate (*sadyaḥ*) seller of an indigenous commodity shall charge five percent to its cost-price as profit and ten per cent to that of an imported one.

D. V. adds: The person, who, after having purchased an indigenous commodity, worth one hundred *paṇas* from another village, sells it that very day, shall charge five *paṇas* (over and above the cost-price). A similar seller of an imported article of the same value shall realise as gain ten *paṇas* only

[44] D. V. reads *paṇyāṅganādi*, which means 'prostitutes' but notes a variant in the foot-note viz *paṇyam aṅganādi*, meaning 'female slaves.

and not more, otherwise he shall be punished. The addition of the word *sadyaḥ* in the above text emphasizes that this rule does not apply to cases of belated sale.

The same authority (II. 252) further says: The sales are to be made everyday on the prices, fixed by the king.

Gautama (cf. II. I.35) has laid down a special rule on the king's fixing of the prices: M rchants are not bound to sell their commodities below cost-prices (*arghāpacaye*).

D. V. adds: The word *arghāpacaye* means 'below the cost-price' (*mūlyāpacaye*)'. The idea is that a merchant, refusing to sell a commodity (under such circumstances), is not to be punished on that account.

Bṛhaspati (XXII. 13) says: If a trader, after having surreptitiously adulterated a commodity by mixing old (undesirable) matter with new matter, makes it look fresh, he should be compelled to pay twice the value of the commodity, thus sold, as damages (to the purchaser) and the same amount as fine (to the king).

Yāj. (II. 303) says: A person, selling things, connected with parts of a dead body (*mṛtānga-lagnam*), is to be fined the middle amercement.

D. V. adds: The word *mṛtānga-lagnam* in the above text means 'clothes, by putting on which the man died or with which the dead body was later wrapped', which, though of insignificant price, if sold (to another person) at a higher price, shall entail (the fine of) the middle amercement upon the seller.

The same authority (II. 245) further says: A person, who mixes spurious (*hīnam*) matters with medicines, oily substances, salt, perfumery, ricegrains, raw sugar and similar other things (° *guḍādiṣu*), is to be fined sixteen *paṇas*.

D. V. adds the following comments:

The word *ādi* (added to the word, enumerating the list of commodities) implies 'gum-raisin and spices also'. The word *hīnam* indicates 'that (spurious matter), which can be detected just on its being mixed with the commodity, exposed for sale'. The prescription in (the above-quoted) text of Bṛhaspati of payment (by the adulterating business-man) of double the price of the commodity and its equivalent fine applies to cases, (detected) just after the sale of that commodity and is thus not conflicting with the present text of Yāj., according to the Ratnākara (p. 295). D. V. further adds that the fault here lies (with the adulterant) up till the time of the sale of the adulterated article, after which the question of luck arises in the case of the purchaser (in having had the misfortune of buying it). If we take bad motive also into account (in those cases, detected after sale), the theory of the application of consequent punishment will be too much extended. So the proper way

of interpreting the above text is to apply it to cases of small quantity of adulteration only or to restrict its application to the substances, such as medicines, specifically listed in the above text. Moreover, it has also to be noted that even in these two kinds of cases, either the offences, so committed, are in themselves comparatively trivial ones or the deterioration (of the commodity) (caused by such adulteration) is small in quantity or quality.

Now begins the topic of the punishment of *manufacturers (of imitations etc.) of consumers' articles.*

Bṛhaspati (XXII. 17-18) says: Those who convert small-priced articles into high-priced ones by effecting some (external) changes in them and thereby defraud women and children, are to be punished in proportion to the values of those articles. Those, who manufacture (imitation) gold, pearls, corals and similar other (precious) things (and sell them as genuine ones to the consumers) are to pay to the purchasers (of those articles) twice the value of the price (exacted by them) and an equal amount of fine to the king also.

Viṣṇu (V. 124) says on the award of the punishment of first amercement: (Such punishment is to be inflicted on) the sellers also of imitation articles (*pratirūpa-vikrāyakasya ca*).

D. V. adds: Here the word *pratirūpa* means 'artificial pearls and similar other (precious) things'. The punishments of such offences will vary in proportion to the serious or trivial nature of the imitation effected, resulting in variations of the prices (of the commodities).

Manu (IX. 292), as quoted in the Ratnākara (pp. 101-2), says: The king should cut into pieces (*lavaśaḥ chedayet*) with razors (*kṣurciḥ*) the body of the goldsmith (*hema-kāra*), the most sinful of the overt thieves (*kaṇṭaka*), engaged in committing unjust actions (done, while engaged in making gold ornaments).

D. V. adds: The word *kaṇṭaka* (literally meaning 'a thorn') means here 'an overt thief' and the phrase '*lavaśaḥ chedayet*' implies that 'the king should cut into pieces the flesh of his body'. Such harsh way of meting out the punishment has been prescribed in view of the heaviness of the punishment to be inflicted in such cases and also in cases of repetition of the offence (i.e. upon old offenders). Cf. Ratnākara (pp. 101-2). But according to the Mit., the above punishment is applicable to cases of (theft of) gold, belonging to (idols of) gods, Brāhmaṇas and kings only (for the purpose of manufacturing ornaments from it).

Yāj. (II. 297) also says on this point: The users (i.e. manufacturers) of spurious gold (*kūta-svarṇa-vyavahārī*) and sellers of forbidden meat

(*vimāṁsasya ca vikrayī*) are to have their three limbs cut off and also to be punished with (the fine of) the highest amercement.

D. V. adds a long note: Halāyudha and others have listed the three limbs, spoken above, as the nose, the ears and the hands and interpreted the compounded word *kūṭa-svarṇa-vyavahārī* as 'he who manufactures fake gold by effecting improvements (on the colour of inferior metals) by mixing the latter with mercury and subjecting the mixture to chemical processes like the application of heat' (Cf. Ratnākara p. 307). The phrase (*vimāṁsasya ca vikrayī*) obviously implies 'sellers of the meat of dogs etc., passing it as that of deer etc.' According to the interpretation of the Mit. of the previously quoted text of Manu, the word *hemakāra* (literally meaning a goldsmith, i.e. a maker of gold ornaments) necessarily involves the selle of such spurious gold (and not simply its manufacture). In view of the prescription of a heavy punishment on persons, convicted of this offence, it is certainly relating only to the manufacture of an outwardly gold-looking substance, so made by mixing silver and other metals with gold. The phrase *lavaśaḥ chedayet* clearly indicates 'mutilation of limbs' and from the addition of the word *kṣuraiḥ* (by means of razors), thus differentiating them from daggers and other more dangerous cutting instruments, the limbs (of the offender), to be cut, appear to be smaller (than his bigger and more important limbs). Thus the above two texts of Manu and Yāj. practically mean the same thing. So the combined import of the two texts is that the manufacturers (and sellers) of counterfeit gold are to be awarded the corporal punishment of the mutilation of their limbs only (and not of death) along with the pecuniary punishment of the highest amercement.

Yāj. (II. 246) again says: The person, who after having converted inferior articles, made of clay, animal hide, jewel, thread, iron, wood, stone and wearing apparel into superior ones, sells them as such, shall have to pay fines, amounting to eight times of the respective sale-prices of those things.

D. V. adds: This conversion of inferior articles into superior ones is 'making them appear erroneously to be superior ones (to the purchaser) by the application of (wily) devices'. Such conversion may be effected in the following ways:

(1) By passing black clay as musk, by means of sprinkling the former with the scent of the latter, (2) By declaring cat's skin as tiger's skin by effecting improvements on the colour of the former, (3) By reddening prisms and passing them as rubies (*padma-rāga*), (4) By effecting qualitative excellence of cotton threads and declaring them as silken threads, (5) By improving the colour of black iron and making them look like silver, (6) By passing *bael* wood as sandal wood by the application of the adour of the latter on

the former, (7) By declaring the rinds of *kakkola* as cloves (*lavanga*), and (8) By effecting improvement of quality of cotton cloths and declaring them as silken cloths. (Cf. Ratnākara, pp. 307-8).

The same authority (II. 247) continues: Proper punishments should be inflicted on persons, who change the sealed covers of vessels (containing precious things) (entrusted to them by other persons and thus misappropriate their contents) or sell imitation carrying-vessels (after having manufactured them).

D. V. adds: Thus the changer of the cover of a sealed vessel, containing gold and similar other precious articles, entrusted to him by somebody and the manufacturing seller of a carrying vessel, apparently looking like one, made of musk (but not really so), should be punished properly. (Cf. Ratnākara p. 308).

The same authority (II. 248) has also laid down the gradation of punishments in the different cases of the above offences in the following manner:

If the article involved is worth less than a *paṇa*, worth a *paṇa* or worth two *paṇas*, the corresponding fines (of the misappropriator or manufacturing seller) will be fifty, one hundred and two hundred *paṇas* respectively. The fines will be proportionately increased with the increase in the value of the commodity involved.

D. V. adds: If a person deposits some quantity of gold with a goldsmith to make for him a drinking vessel of the *svastika karuca* or other patterns but the goldsmith, after having misappropriated a part of the gold so deposited, conceals his misappropriation by telling the depositor that a part of the gold has naturally vanished by the (chemical) processes of heating, blowing, rolling and similar other actions, he is to be fined an amount, commensurate with the value of the stolen part. The natural vanishing of portions of the (various) metals, though specified by Nārada and other authorities, has not been taken into account here, as such vanishing occurs (to a limited extent) through the necessary chemical processes (adopted by goldsmiths). So also the similar cases of the weaver, silk-manufacturer (and similar other textile workers), though described by Manu and other authorities, have been left unstated here.

PUNISHMENT OF PHYSICIANS

[45]Manu says: The physician, who, not being familiar with the (application of) specific medicines and *mantras* and being also ignorant of the causes

[45] Read in the Ratnākara (p. 304) as a text of Bṛhaspati,

and cures of diseases, extorts money from patients, deserves punishment as a thief.

Yāj. (II. 242) has laid down the following specific punishments (of the phy icians) in the following specific classes of patients:

A (veterinary) physician, acting wrongly in the treatment of a lower animal, is to be fined the first amercement, while physicians, doing so in regard to human beings and royal personages, are to be awarded the fines of the middle and highest amercements respectively.

D. V. adds: The Mit. is of opinion that the punishments will vary in proportion to the monetary values of the lower animals or the king's ownership over them.

Viṣṇu (V. 175-7) says: A physician, acting wrongly while treating the best (class of men), the middle (class of men) and the lower animals, is to be fined the highest, middle and first amercements respectively.

D. V. adds: All these several kinds of (pecuniary) punishments are to be inflicted in those cases only, where the patients survive the treatment, but the punishments shall have to be enhanced where the patients succumb (to the wrong treatment). This is the opinion of Nārāyaṇa, expressed while interpreting Manu (IX. 284), beginning with the words *cikitsakānāṁ sarveṣām* [i.e. of all physicians (acting wrongly)].

PUNISHMENTS OF CHEATS, CREATING CONFIDENCE (in unsuspecting persons) AND OF ASSESSORS, WRONGLY ADVISING (the king) OR ACCEPTING BRIBES (from the litigants)

Vyāsa says: Prostitutes, cheats and artisans rob persons of their wealth by engaging them in vicious activities—persons, who are neither disposed to do so nor conversant with the pros and cons of such activities.

D. V. adds that hence the above classes of persons are known to be confidence-creating cheats (*visrabdha-vañcakāḥ*). (cf. Ratnākara, p. 305).

Bṛhaspati (XXII. 14) also says: The untruthful (*anyāya-vādinaḥ*) bribe-accepting and confidence-creating courtiers (*sabhyāḥ*) are to be banished (from the territory).

D.V. adds: The word *sabhyāḥ* means 'members of the royal assembly' and the word *anyāya-vādiaḥ* implies 'those (cou tiers), who become untruthful out of greed of money'. The phrase *visrabdha-vañcakāḥ* is to be understood as 'those (courtiers), who, after having given false hopes (to the litigants) of securing favoura le decisions for them, do not do so and thus cheat them'. The bribe-accepting class of courtiers (*utko.ādāyinaḥ*) is of two kinds, viz. those, who (occasionally) accept bribes (out of court) and those,

who (habitually) do so, (being engaged in adjudication) and thereby eke out their living.

Vyāsa has thus defined the former[46] (the latter?) kind: Those persons, who, having been posted in halls of justice, give out wrong judgements by accepting bribes (from the litigants), are known as *utkocakāḥ* [i.e. (habitual) bribe-acceptors]. These men virtually destroy the king's property. The Ratnākara has thus explained the term viz. *sabhyotkocaka-vañcakāḥ*, occurring in the text of Manu (cf. IX. 258): (The courtiers), who, having been entrusted with the duty of deciding law-suits, accept bribes (from the litigants), are called *utkocakāḥ*, i.e. bribe-acceptors and are known to be 'living upon the acceptance of bribes'.

Viṣṇu (V. 179-180) has laid down the following punishment for these men: Forfeiture of the entire property should be effected (by the king) of the false witnesses and of the courtiers, living upon bribes.

Manu (IX. 231) also has said: The king should completely impoverish those courtiers, who, having been engaged (by him) in supervising litigation but being boiled (as it were) with the heat of (i.e. corrupted by the greed of) wealth, spoil (*hanyuḥ*) the suits of the litigants.

D.V. adds: 'Being boiled with the heat of wealth' (*dhanoṣmaṇā pacyamānāḥ*) means 'being corrupted with the heat, as it were, of the greed of bribes' (cf. Kullūka's commentary on the above verse of Manu). Nārāyaṇa, however, says that the word *hanyuḥ* in the above text means '(those who) declare the litigants, though not defeated, as defeated in the lawsuits'.

Yāj. (I. 339) says: The king should first deprive the (habitual) bribe-acceptors of all their belongings and then send them to exile. D. V. adds that the punishments for the above offence vary according to its first or repeated commission.

PUNISHMENT OF DECEITFUL INTERMEDIARIES AND FALSE WITNESSES

Bṛhaspati (XXII. 19) says: If out of affection (towards a businessman or a litigant) or due to avarice, the intermediaries (*madhyasthāḥ*) deceive another person or the witnesses depose falsely, they are to be fined twice the amount (of the money, illegally extorted from others for the commission of the offences).

D. V. adds: The *madhyastha* is an officer, appointed (by the king) to fix prices of commodities but if such an officer illegally fixes the prices and thus exacts money (from the businessmen), he then comes within the pur-

[46] D. V. wrongly reads *prathamam* (i.e. the former), which should be *dvitīyam* (i.e. the latter.)

view of the present text. Banishment of the courtier, committing the above offence, has already been laid down by Vyāsa (Yāj. ?). As regards false witnesses, the prescription of the present text holds good in cases of their first commission only (and not for their repeated commissions).

Viṣṇu (V. 179-180) has, however, laid down the following prescription of punishment for the (habitually) bribe-accepting courtiers and false witnesses: Forfeiture of the entire property (is the punishment) of the false witnesses and of the courtiers, eking out their living from bribes.

D. V. adds: But when the witnesses, not having accepted any bribes beforehand, depose falsely out of greed (for future gains), the different punishments, to be meted out to them in those cases, will be described below in the chapter of Miscellaneous offences.

PUNISHMENT OF GAMBLERS

Manu (IX. 223) has divided gambling into two kinds: Whatever is gambled with inanimate objects in the world is *dyūta* (i.e. gambling proper) and whatever similar act is done with living creatures is called *samāhvaya* (i.e. prize-fighting).

D. V. adds: The sport, with inanimate objects kept as wagers, is called a *dyūta*. But if the wager is with pigeons, cocks, sheep and similar other animals or with human beings, it is then known as a *samāhvaya*. This two-fold gambling may also be resorted to by the king, if circumstances so require, as Yāj. (II. 203a) has said: (The king) should start gambing under the presidentship of a supervising officer (*eka-mukhaṁ*) for obtaining clues of the thieves (*taskara-jñāna-kāraṇāt*).

D. V. adds: The compound word *eka-mukham*, when dissolved, becomes *ekam mukham i.e. pradhānam yatra tat tathā*, i.e. (having one person as its president). The insertion of the word *taskara* (i.e. thieves) (in the other compound word *taskara-jñāna-kāraṇāt*) has been made, inasmuch as persons, having amassed fortunes by theft, turn into gamblers and so the king should appoint one headman, technically called *sabhika*, for the apprehension of the thieves; the word *sabhika*, having been derived from the word *sabhā*, which means 'a den of the gamblers and cheats', thus stands for 'a person, familiar with or presiding over the den'. So a *sabhika* or *sabhāpati* is 'one, who lives upon the profits, accuring from the sports, conducted by means of dice and various other sporting implements, improvised for that purpose.' His duties have thus been laid down (by Yāj. II. 200):

Having been properly protected (by the king), he should pay the promised dues to him, should collect money from the defeated gambler and make over

that amount to the victorious one, should be forgiving and should utter truthful words (to the gamblers for creating their confidence).

PUNISHMENT FOR PRIZE-FIGHTING (involving dishonest sporting with animals)

Bṛhaspati (XXII. 12) says: The following classes of mean[47] (or sinful) persons, such as those, who dishonestly sport with dice and cousequently deprive the king of his dues and those, who deceive other persons (including their playmates) by means of (false) counting (of the dice etc., used in such sports) are all cheats and are to be punished by the king.

D. V. adds: Wagering with sheep etc. is also included within the above-mentioned sporting with dice, as both the above ways of sporting are equally condemnable on equitable grounds and on the authority of the following text of Yāj. (II. 203b), introduced by him in the topic of gambling:

Similar is the (prohibitive) injunction against prize-fighting with animals.

So Bṛhaspati (XXII. 11) has again said the following in a general way:

The secrets (of the prize-fighters) should be publicised and they (i.e. the prize-fighters) should be banished (from the territory).

Viṣṇu (V. 134-135) also says: The hands of the prize-fighters and the thumb and the second finger taken together (*saṇḍaṁśa*) only of the swindlers are to be cut off.

D. V. adds that the above-mentioned (harsh) punishments are to be inflicted in cases, involving gravity of the above offences and that consequently, according to the Ratnākara (p. 306), the word *cihnam* (i.e. an evident sign of an already punished criminal), occurring in the following text of the same authority (i.e. Viṣṇu), is in consonance with the punishments, just previously prescribed (by him) and consisting of the mutilation of the hands or of the thumb and the second finger taken together:

"The king should have the persons of the prize-fighters and swindlers imprinted with evident signs (*sa-cihnam*) (as proofs of their past punishments) and should then turn them out of the territory."

But the author of the Mit. says that those, who dishonestly engage themselves in prize-fighting or swindle out money from others by deceitfully using jewels, *mantras*, powerful drugs and similar other things, are to have their persons, imprinted with characteristic marks of dog's foot etc. and transported out (*nirvāsayet*) (of the territory).

[47] D. V. reads *kṣudrāḥ* (i.e. mean persons) in the body of the text and a variant viz. *pāpāḥ* (i.e. sinful persons) in the corresponding foot-note.

D. V. adds that this transportation (*nirvāsanam*), (when laid down as a punishment) without any qualifying epithet, invariably means 'out of the territory', as always interpreted (by commentators), or 'out of the gamblers' community (*dyūta-maṇḍalāt*)', as Nārada (dyūta° V. 6) has laid down: (The king) should banish the sinful gamblers and prize-fighters from their community (*nirharet dyūta-maṇḍalāt*), after having bedecked their necks with garlands of dice, which is their proper punishment.

D. V. adds: But the Mit. has read *rājā rāṣṭrād vivāsayet* [i.e. the king should banish (them) from the territory] instead of *nirharet dyūta-maṇḍalāt*, (as read in the text of Nārada, quoted by us), after having quoted this text by prefacing it with his remark that "a special rule has been laid down by Nārada on the banishment (*nirvāsane*) (of such criminals)." So it is evident that these optional punishments are to be inflicted in consideration of the gravity or lightness of the offences, committed in this connection. Thus, as the following text (of Manu IX. 225-226, only four feet only of the eight such), though in the nature of a recommendation, added to an injunction (*vidhyarthavāda-praviṣṭam api*), contains both the words viz. *purāt* and *rāṣṭrāt* (the quoted text of Manu reads *rāṣṭre*), (meaning 'the city' and 'the territory' respectively), so expulsion from both the (capital) city and the territory is implied:

"The king should forthwith banish from the (capital) city (*purāt*) the gamblers, the cheats and those other persons, who entice other men and other men's wives by secret signs, as these former classes of persons, residing in the territory (*rāṣṭre*), torment the peace-loving citizens."

Though the same authority has described in the following text (IX. 222a) the thievish nature of both gambling and prize-fighting without making any differentiation whatsoever between them: "Both gambling and prize-fighting are overt thefts" and though he has also laid down indiscriminately in the followimg another text (IX. 224) the punishment of mutilation of limbs and similar other (harsher) punishments:

"All those, who themselves indulge or cause others to indulge in gambling and prize-fighting, and those Śūdras, who adopt the special *insignia* of the twice-born classes, are to be put to death by the king,"

yet both the offences, enumerated in the above two texts, are to be taken as nothing but deceitful prize-fighting only, as that interpretation fits in well with the above-quoted text of Bṛhaspati. Otherwise, the fate of the individual criminal is to be taken into account, as hinted at by the author of the Mit. on this topic (regarding the infliction of the heavier penalty).

It has been prescribed on the authority of the following two texts of Yāj. (II. 201) and Nārada (dyūta° V. 7) respectively that a person, even though

winning in a gambling contest, unknown to (i.e. unauthorised by) the king, shall not be allowed to gain the stipulated amount but shall be fined:

"The king's share in a gambling contest is well-known and so the gambler, winning in such a contest, shall have to pay beforehand that (king's share for adjudication of his case) in a place, presided over by the *sabhika* (i.e. the supervisor of gambling) and not otherwise."

"The man, who engages himself in a gambling contest, unauthorised by the king, should not only be deprived of his gains, if any but also should be punished."

So it appears that the Mit. and the commentary on Parāśara have introduced the above text of Yāj. (in the respective commentaries) to emphasize the principle of the king's duty to exact the above penalty from the defeated gambler, only when the supervisor fails to do so.

Just as in a suit for recovery of debt, the creditor has to pay to the king beforehand for the purpose of adjudication (i.e. as court-fee) one-twentieth part of the loan, going to be fraudulently ignored by the debtor, without which no such decision and the consequent repayment to the creditor of the money lent can take place, so on the same equitable principle the king's share (of the gains of gambling) has also been prescribed here. So the real import of Yāj's text (quoted above), is that only after receiving his own share (from the winning person), the king should compel the defeated gambler to make over the stipulated money to the winner and not otherwise.

The clause viz. *dyūtamaṇḍale sasabhike jitam* (i.e. the winner in a gambling contest, presided over by the supervisor) also emphasizes the same meaning, containing as it does the principle of the king's share.

Thus, he, who engages himself of his own accord in a gambling contest without the express permission of the king, will not realise his profit, even though he has won in the contest, as even the honest (and winning) gamblers do not succeed[48] in exacting their gains (from the defeated ones) without the royal power—this is the purport of the first three feet of the above text of Nārada.

Such being the outcome of the above interpretation that the winning gambler cannot realise his profit without the intervention of the king, who also does not interfere without getting his share beforehand (from the winning party), both the above propositions being thus interdependent, the combined purport of the above-quoted two texts is that a gambling contest may be launched into only after getting the permission of the king and promising

[48] D. V. has misprinted *na... śaktyā* for *na... śaktā*.

to pay him his share. The mention of punishment in the concluding foot of the above text of Nārada is on the analogy of that, imposed on a person, who swims (with his arms) across a river, having the ferry system, out of fear for (i.e. with the intention of avoiding) the ferry charges. So the actual offences (committed in both the cases) consists in avoiding the king's legal dues and nothing else, as Vaśiṣṭhā (XIX. 125) has laid down that "a person, swimming across a river with his arms, shall be fined a hundred copper coins." So if it is interpreted that in the present case also, neither the introduction of a gambling contest nor winning in such a contest, when introduced, turns out to be (legally) inadmissible and even if so considered, the winner is not (legally) entitled to realise his gains, such an interpretation is vitiated by an invisible fault only (*adṛṣātrthātva*). So if a person, being confident of realising his gains in case he wins and not caring for the king's punishment, launches into a gambling contest without the king's authorisation, stipulating that the losing party shall have to pay the wager, in such words 'If your dice of the same denomination fall twice or my sheep slip away from your sheep, I shall then pay you a hundred (copper?) coins', then in the happening of the above contingencies nobody is to be held guilty (and consequently punished).

PUNISHMENT OF (BOGUS) ASTROLOGERS

Bṛhaspati (XXII.15) says: Those, who, being ignorant of the Science of Astrology and of the evil portents (indicated by it), advise people about the latter out of (sheer) greed of money, are also to be (appropriately and) carefully punished (by the king).

D. V. adds that the addition of the phrase 'out of greed of money' (*artha-lobhena*) suggests that the consequent punishments (for the above offence) vary in proportion to the money thus extorted.

PUNISHMENT OF WASHERMEN[49] (*rajaka-daṇḍaḥ*)

Manu (VIII. 396) says: A washerman (*nejakaḥ*) should gently wash the cloth on a smooth board of the silk-cotton wood, should neither carry (*na nirharet*) one man's clothes to washing places by tying them together with another man's clothes nor allow anybody (but the owner) to wear them (*na vivāsayet*).

[49] The words *nejaka* (noted below) and *nirṇejaka* are the real synomyms for 'washerman' while *rajaka* really means 'a dyer' only and *not a washerman*.

D. V. adds that the Ratnākara (p. 311) has explained the clauses '*na nirharet*' and '*na vivāsayet*' as above. But Nārāyaṇa has interpreted the latter clause as 'should not make (an unreasonable) delay in delivering them to the owner' and explained the former clause as 'should not change one man's clothes with those of another'. The Ratnākara (loe. cit.) has added that '(a washerman), doing these unfair acts, becomes liable for punishment.'

The Matsyapurāṇa says on this topic: The clothes (of the employer) are to be gently washed (by a washerman) on a smoth board. Any washerman, doing otherwise, is to be fined (*daṇḍyaḥ*)[50] a silver *māṣaka.*

Yāj. (II. 238) says: The washerman is to be fined three *paṇas* for putting on the cloth of another man (given to him for being washed) and he (i.e. the washerman) is to be fined ten *paṇas* in case he sells, gives on hire, mortgages or makes a gift of such cloth (to a friend, asking for the same).

The same authority (II. 181) further says: In cases where a cloth is lost (i.e. damaged or destroyed by the washerman for washing it in contravention of the rules, laid down above) and persons, proficient is assessing values of various articles and in consideration of the time and place (of the occurrence of the mischief) and the pecuniary condition (of the washerman concerned), prescribe the specific amount of compensation, such compensation is surely to be paid (by the offending washerman to the owner of the cloth, so lost by reason of the former having washed it on an uneven piece of wood).

Nārada (krīta° VV. 8-9) has laid down the variations of compensation in proportion to the variety of uses (already made of the clothes, so damaged or destroyed): The compensation is to be less by one-eighth than the full cost-price of a cloth, which has been washed once only (before being given to the washerman for re-washing), by one-fourth in a case, where double washing has already been done, by one-third in a case of similar treble washing and by half in that of quadruple washing. After that, the compensation to be charged for a partially worn-out cloth is to be reduced to one-fourth of the costprice only. But no such rule is to be followed in cases of damaging or destroying a completely worn-out cloth (*jīrṇasyāniyamaḥ kṣaye*).[51]

D. V. adds that the exact calculation of the above-mentioned various kinds of compensation is to be made by the arbitrators, mentioned above, in accordance with the above rules.

[50] D. V. reads *daṇḍaḥ* but *daṇḍyaḥ* is better here.

[51] D. V. wrongly reads the phrase as '*jīrṇaḥ syān niyamaḥ kṣaye*'.

PUNISHMENT OF PERSONS, WHO EXTORT MONEY FROM OTHERS ON FALSE PRETENCES

Manu (VIII. 193) says: He, who snatches away other men's wealth on false pretexts (*upādhibhis tu*), shall be publicly put to death by various methods (by the king), along with his accomplices.

D. V. adds the following comments: That is, he, who extorts wealth from others on pretexts, introduced by such false statements as "The king has been angry with you and I can save (*rakṣhāmi*)[52a] you from his anger if you agree to give me wealth" and "I shall help you to secure that maiden (in marriage) or gain that wealth (if you agree etc.)"—such a person shall be put to death by the king by the adoption of various methods such as mutilation of his limbs, such as hands and legs, or decapitation. Though the above text really relates to 'deposit' (*nikṣepa*), having been included (by Manu) within that very topic, yet, as it has been (quoted and) explained by previous writers in this topic (of fraudulent extortion) on grounds of equity, so we have also introduced it here. Thus, he, who misappropriates another person's wealth, deposited with him, by falsely declaring that 'nothing has been deposited (with me)', is to be so punished. But Nārāyaṇa has said that the above-described punishment is to be inflicted in cases of repeated commission of the above offence of extortion.

PUNISHMENT OF TEACHERS AND SPECIALISTS (in technical arts)

The Matsyapurāṇa, as quoted in the Dharmakoṣa, has laid down: The virtuous king should cause those persons to disgorge the entire amounts of fees, received by them, who, after having received beforehand the requisite fees (from their pupils or apprentices), do not initiate the latter into (the mysteries of) the desired learning or technical skill.

PUNISHMENT OF (FALSE) MANTRAS AND TANTRIC (i.e. OCCULT) PRACTICES

Bṛhaspati (XXII. 20) says: The king should banish from his territory those persons, who, after having somewhat hoodwinked people on the strength of *mantras* and drugs, employ upon them occult practices, such as making them subservient to them (*mūlakarma*).

D. V. adds that '*mūlakarma*' in the above text means *vaśīkaraṇam* (i.e. 'making them subservient to them').

[52a] D. V. has misprinted *rakṣāmi* as *vakṣyāmi*.

PUNISHMENT OF NON-HERMITS POSING AS HERMITS

Bṛhaspati (XXII. 16) says: The king's officers shall put to death those ordinary persons, who pose themselves (as hermits) by taking the staff, deerskin and similar other things (appropriate to hermits only) and thereby fraudulently extort money from other (unsuspecting) persons.

PUNISHMENT OF (PROFESSIONAL) CHEATS AND SIMILAR OTHER SWINDLERS

Manu (IX. 225) says: The king should forthwith banish (*nirvāsayet*) from the capital city (or from the territory) gamblers, professional cheats (*kuśīlavān*), beckoners of other men and other men's wives (by secret signs) (*kerān*), those who are attached to or dress themselves as heretics (*pāṣaṇḍasthān*) those who follow professions, exceedingly inappropriate to their respective castes (*vikarma-sthān*) (even when there is no emergency) and (dead) drunkards.

D. V. adds the following comments:

The word *pāṣaṇḍasthāḥ* in the above text means 'those, who are attached to (Buddhist or Jain) monks, known as *kṣapaṇakās*', Kullūka Bhaṭṭa in his commentary on Manu (IX. 226) has explained the portion '*vikarma-kriyā*' of the term '*vikarma-kriyayā*', occurring in that verse, as 'cheating' (*vañcanam*).[53] Thus, depriving other men of their money by cheats etc., having taken recourse to deceitful means, is emphasized here. As the previous other digests have included the 'dead drunkards' (*śauṇḍika-s*)[54] in their chapters on theft, men of such deceitful habit only and not dealers in spirituous liquor are to be punished, inasmuch as persons happen to belong to this very caste only by the accident of their birth. Kullūka has further said [in his comments on the present verse, i.e. Manu (IX. 225)] that 'other unspecified cheats are also to be included within the above list,[55] as the above text has been laid down (by Manu) in the topic of gambling'. But Nārāyaṇa has interpreted the word *nirvāsayet* of the above text as '*bahir eva vāsayet*' (i.e. 'should make them reside outside (the capital city or the territory). So it seems that (Kullūka's) interpretation of *kuśīlavān* as *naṭān*[56] (i.e. actors) implies that this class of men is not to be regarded as 'overt

[53] Kullūka reads *vañcanātmaka-kriyayā*.

[54] Kullūka explains its as *madya-karān* (i.e. liquor-manufacturers) which may be a misprint for *madya-parān* (meaning 'addicted to drinking')

[55] Kullūka's interpretation omits the latter portion of the above after the figure '55'.

[56] Kullūka reads *nartaka-gāyanān* (i.e, daneers and singers).

thieves' (*prakāśa-taskarāḥ*). So the earlier (commentators and) digest-writers have said that there can be no gradation of punishments, according to the gravity of the offences committed, in the absence of the prescription of any specific punishments like that for 'overt thieves', for persons, enumerated here.

The digests (and commentaries), after having said all this, have quoted the following text of Vyāsa:

Rich merchants (*naigamādyāḥ*) and similar other (professional and non-professional) classes of men should be so punished according to their offences that they may not (in future) transgress the limits (of sanctioned behaviour) and may abide by the current conventions.

D. V. adds: So it appears that the punishment, prescribed for a group of criminals (of the above classes, acting in a conspiracy), should be inflicted upon another group also in view of its possible association with the former group. But where different punishments have been laid down for two or three such groups, they are to be meted out also in consideration of the gravity or lightness of the offences and of their first or repeated commission and also in view of the comparative richness or poverty of the criminals concerned. Again, where no such punishment for a particular group has been laid down, that is to be devised according to equity or in consonance with the specific nature of the offence. This procedure is to be followed in similar other analogous cases. Bṛhaspati (XXII. 2-3) has thus specified such criminals by the following two texts:

Merchants (*naigamāḥ*), physicians, gamblers, courtiers, bribe-receivers, swindlers (*vañcakāḥ*), (bogus) astrologers and prognosticators (*daivotpātavidaḥ*), persons, engaged to perform propitatory rites (*bhadrāḥ*), manufacturers (of spurious articles) (*śilpajñāḥ*), bogus mendicants (*pratirūpikāḥ*), servants, who perform acts, unauthorised by their masters (*akriyākāriṇaḥ*), officers, (appointed by the king) to fix prices (of commodities) (*madhyasthāḥ*), false witnesses and (feigned) magicians are known as 'overt thieves' (*prakāśa-taskarāḥ*).

D. V. adds the following commentary: *Naigamāḥ* means 'traders, defrauding customers by the use of false balances etc.' The word 'physicians' (*vaidyāḥ*) refers to those only, who aggravate the diseases (of their patients) (by administering spurious and inefficacious drugs to them) and thus defraud them and the word 'courtiers' is in relation to those only, who wrongly adjudicate (a law-suit) out of greed of money. The word 'bribe-receivers' has been used in connection with those, who accept bribes, when placed in (high) official positions. The word *vañcakāḥ* (i.e. swindlers) has been interpreted in the Ratnākara (p. 288) as 'those, who fraudulently misappropriate the money of one of the partners in a joint-stock venture, but (Kullūka) in his commentary

on Manu has explained it as 'those, who, after having taken gold from other persons (i.e. from customers for the purpose of manufacturing gold ornaments for them), mix it with other baser metals and thus defraud them'. The Ratnākara (loc. cit.) has dissolved and explained the compound word *daivotpātavidaḥ* as *daivavidaḥ* and *utpātavidaḥ* and as respectively meaning 'those, who falsely foretell a person's fortune' and 'those, who falsely predict future natural calamities' and 'thereby deprive others of their money'. But Halāyudha has read the above expression as '*tathaivotpātavidaḥ*' and explained it as 'those, who falsely interpret (the present physical phenomena as) portents of future natural calamities and thus extort money (from the public)'. The Ratnākra (loc. cit.) has explained the word *bhadrāḥ* as 'those, who, having been engaged (by somebody) to perform propitiatory rites (in his favour), do not do so and thus defraud him of his money'. But Kullūka Bhaṭṭa in his commentary on Manu has explained the term as 'those, who, though committing sins secretly, assume (unsuspected) good appearances and thereby extort many from others'. (Nārāyaṇa) Sarvajña has, however, interpreted it as 'those, who astonish women and similar other persons (i.e. children and illiterate folk) by concealing their real appearances (i.e. by assuming false appearances)'. The Ratnākara (loc. cit.) has explained the terms, viz. *śilpajñāḥ* and *pratirūpikāḥ* as 'those, who exact money by manufacturing spurious articles' and as 'those, who extort money by anointing their persons with characteristic holy marks etc.' respectively. But Halāyudha has interpreted the latter term as 'those, who falsely carry the *insignia* of staff and similar other things, appropriate for mendicants'. The previously quoted text of Bṛhaspati (XXII. 16) (p. 115 of D. V.), viz. *daṇḍājinādinā*. . . *rājapuruṣaiḥ* [i.e. The king's officers . . . fraudulently extort money from other (unsuspecting) persons]. corroborates the above interpretation. The word *akriyākāriṇaḥ* means 'servants, (performing acts, unauthorised by their masters)'. Halāyudha has said that the above epithet applies to all the various classes of persons, (previously and subsequently enumerated in the above two texts of Bṛhaspati) and hence the fraudulent character of all those kinds of men is to be understood, while convicting them of those particular offences. The word *madhyasthāḥ* implies 'those (officers), appointed (by the king) for fixing prices of commodities but (secretly) exacting money (from the businessmen) by fixing false (i.e. exorbitant) prices (of their commodities)'. 'False witnesses' (*kūṭa-sākṣiṇaḥ*) are 'those, who depose falsely in other men's suits (by speaking untruths)'. '(Feigned) magicians' (*kuhaka-jīvinaḥ*) imply 'those, who show magical processes (and perform occult practices) and thus take away others' money'.

Nārada (*caura*° vv. 2 and 3a) says: The following classes of persons are known as 'overt thieves' (*prakāśa-vañcakāḥ*):

(1) Those, who use false measures and balances,
(2) Those, who accept bribes (from others),
(3) Those, who give false hopes to others or create false fears in them and extort money from them,
(4) The swindlers, who surreptitiously rob others of their money,
(5) The public women (i.e. the prostitutes),
(6) Those, who put on royal robes without royal permission, and
(7) Those, who, having told others of their intention to invoke a particular deity for their welfare, invoke another deity (*anyadeva*[57]*-maṅgalādeśadvārā*) and thereby defraud their clients.

Manu (IX. 257a and 258-260) lays down: The following categories of persons belong to the class of overt thieves (*prakāśa-vañcaka-s*):

(1) Those, who snatch away other persons' wealth in exchange of their (i.e. of those former persons) various (spurious or inferior) merchandise,
(2) Those, who accept bribes (from others) (but really do mischief to them without giving them anything useful in return, according to Kullūka's comment),
(3) Those, who extort money from other people by practising fraud upon them (*aupadhikāḥ*),
(4) (Ordinary) cheats (but swindlers, according to Kullūka),
(5) The gamblers,
(6) Those, who, having promised their clients to invoke benign deities for their welfare, do not do so (*maṅgalādeśa-vṛttāḥ*),
(7) Vicious persons, posing as virtuous ones,
(8) Magicians (*aikṣaṇikāḥ*),
(9) High officers, acting improperly out of greed of money (*asamyakkāriṇaścaiva mahāmātrāḥ*),
(10) The Quacks (*cikitsakāḥ*),
(11) The officious painters (*śilpopacāra*[58]*-yuktāśca*),
(12) Public women (*paṇya-yoṣitaḥ*), adepts in the art of hypnotising others. and
(13) Persons of the degenerate classes, working secretly and posing as members of the regenerate classes (*anāryān āryaliṅginaḥ*). These and similar other persons are to be known as overt oppressors of the people (i.e. anti-social elements).

[57] D. V, has misprinted °*deva*° as °*deśa*°.
[58] D. V. has misprinted °*cāra*° as °*kāra*°.

D. V. adds the following comments: Nārāyaṇa has explained the term *aupadhikāḥ* as 'those who take away (money from others) by taking recourse to *upadhi* (i.e. *chala*), meaning (fraud), made by means of the balance and similar other (weights and measures), which word should be *sopadhika*[59] (to be grammatically correct), but the former term, being syntactically the same as the latter, may be so retained'. The following text of Vyāsa has fully explained the connotation of the term (*mangalādeśa-vṛttāḥ*):

"Those, who give out false hopes of propitiating appropriate deities (to avert their clients' calamaties), deceitfully extort money from others on that account, (but do not do so) and thus defraud men and women" (The last foot of the above text of Vyāsa viz. *anāryāś cāryaliṅginaḥ* is almost the same as the corresponding foot of the last verse of Manu, explained above viz. *anāryān āryaliṅginaḥ*). The Ratnākara (p. 289) has interpreted the above phrase as 'those, though not *Brahmacārins* (i.e. ceremonial practisers of the vow of student-hood) and not belonging to similar other (high and respected orders of society), pose themselves as such and consequently extort money from others'. Kullūka in his commentary on Manu has said that the word *mahāmātrāḥ* means 'those, who derive their living from the training of elephants' and that 'the word *asamyak-kāriṇaḥ* qualifies both *mahāmātraḥ* and *cikitsakāḥ* (i.e. physicians) (just following the above word)'. (Nārāyaṇa) Sarvajña also, after having read *mahāmātyāḥ* for *mahāmātrāḥ*, has explained the entire foot (of the above-explained verse of Manu) as we have done. Halāyudha, having read *paṇya-doṣiṇah* for *paṇya-yoṣitaḥ* and connected it with both *śilpopacārayuktāśca* and *nipuṇāḥ*, just preceding it one after another, has explained the whole phrase as "those black-marketeers, who outwit even the *Śrotriyas* by the use of gems and similar other costly things and receive in return costly presents (i.e. big values)." (Kullūka) Bhaṭṭa has interpreted the phrase viz. *anāryān āryalinginaḥ* as 'those Śūdras and other (degenerate classes of) persons, who assume the garb of Brāhmaṇas and extort money from others'.

All the above interpretations (of different commentators and digest-writers) are equally acceptable, as all the several classes of persons, (explained by them), fall within the category of overt thieves (*prakāśa-taskara*) without any distinction. The punishment for *pratirūpakarā-*[60] *dīnām* (i.e. assumers of royal dress without royal permission) and other classes of persons (enumerated above), will be described below in the topic of miscellaneous offences (*prakirṇaka*).

[59] D. V, has misprinted it as *sopādhika*.
[60] D, V. misreads *pratirūpakānām* for *pratirūpakarādīnām*.

Manu(VII.123-124) has thus laid down the punishment of the chief officers (*pradhāna-bhṛtān*)[61]:

As the officers, placed (by the king) in charge of the protection (of the people) in his territory[62], often turn out to be deceitful and extort money from others, so (the king) should shield his subjects from (the clutches of) these persons. Those vicious-minded persons, who wring out money from the litigants, should have their entire property forfeited and should themselves be exiled by the king.

Kātyāyana (V. 956) says: Those who imitate the king in his appearance (dress etc.), the on-lookers of dances (at the cost of the official duites, imposed upon them by the king), those, who realise more fines (*prakarāḥ*) (than are due from the criminals) and the piferers of the king's wealth should be awarded various corporal punishments.

D. V. adds: Some authority has explained the term *prakara* as 'the (misappropriator of) the money, realised as fines'. But (Vācaspati) Miśra (V. C. p. 159) has explained it as 'those, who exact higher fines (from the criminals), which are already high'. The punishments for these (two) offences are, however, as have been laid down before.

PUNISHMENTS FOR APRAKĀŚA-TASKARA-S (Covert Thieves)

Manu (IX. 257b)[63] has thus classified them: The thief (*stena*), the homeless wanderer (*aṭavya*) and similar other persons are included within the category of *pracchanna-vañcaka-s* (i.e. surreptitious cheats or *aprakāśa-taskara-s*).

D. V. adds that according to Ratnākara (p. 289), the word *stena* means 'those thieves, who commit stealing by making holes (in a person's wall)' and the word *aṭavya* implies 'persons, who have taken up their residence in a forest (and have no house to live in)'; and that by the addition of the word *ādi* (i.e. similar other persons), the thieves, who live in open meadows[64] (or in the outskirts[65] of the village, according to a different reading), are included; and that this last kind of persons commits stealth (i.e. burglary) even in the day-time.

Bṛhaspati (XXII. 4) has, however, said: The following classes of criminals are known to be *pracchanna-taskara-s*, viz. hole-makers (in the walls of other men's houses), persons who relieve travellers of their purses, the kidnap-

[61] D. V. reads *bhūtān* for °*bhṛtān*.

[62] D. V. reads *rāṣṭreṣu* but Manu reads *rājñohi*.

[63] Manu reads the text a bit differently but meaning the same.

[64] and 65 D. V. reads *prāntara*° (i.e. a meadow) and *prānta*° (i.e. the outskirts etc.) in the body of the text and the footnote respectively.

pers of bipeds (i.e. men) and quadrupeds, stealers of movable property (*utkṣepakāḥ*) (before the very eyes of the guards by evading their notice) and usurpers of grains.

D. V. adds that according to the author of the Mit., the term *utkṣepaka* means 'one, who snatches away something from the possession of another man by throwing a piece of cloth or similar other things over the person of the latter'.

Vyāsa has laid down: Those, who roam about at night, unperceived (by ordinary persons) and equipped with digging instruments, fit for committing theft and those, whose entry into a house cannot be perceived (by its inmates) —these two kinds of criminals are known as *pracchanna-taskara-s*. The *utkṣepaka*, the adept in the art of digging holes (in other men's houses), the snatcher of travellers' purses, the cutter of the knots (tying up gold and similar other precious things with a person's wearing apparel), the kidnappers of men and women respectively and the stealer of (domestic) beasts—these, along with the previously described two kinds (of *pracchanna-taskara-s*), are known to be the nine classes of thieves'. D. V. adds: "The inclusion of the above two kinds (of *pracchanna-taskara-s*) in the present list (of nine kinds of thieves), such as an *utkṣepaka*, is for inflicting upon them the appropriate punishment for the preparation etc. (of the crime of theft), though they are not actually redhanded. Thus, (on the authority of the texts of Bṛhaspati and Vyāsa, read together), it appears that there are the following eight classes of *aprakāśa-taskara-s* viz. (1) the hole-digger (2) the stealer of a traveller's purse (3) the stealer of bipeds (4) the stealer quadrupeds (5) the *utkṣepaka* (6) the knot-cutter (7) the usurper of grains and (8) the stealer of miscellaneous things. The homeless wanderer and similar other persons (without any ostensible means of livelihood) are only a slightly different class of thieves from the snatchers of a traveller's purse and are really mutually inclusive. Though according to the Ratnākara (p. 290), a separate class of thieves other than the hole-diggers, spoken of by Bṛhaspati, is indicated by the use of the word 'usurper of grains' (*śasyahara*) yet no real difference is effected by including or excluding the latter class, enumerated in the list of Bṛhaspati but only a difference in the number of the classes is made, as the consequent punishments for both the crimes are the same, on the analogy of the maxim viz. 'By one's mother or by a neighbour woman'. Still as Manu (cf. VIII. 320 and 323) has prescribed a punishment (i.e. of death or a lesser punishment) for a theft of paddy, which, though it ought to have been equal (in the cases of tendency) to that laid down in theft of gems, is actually equal to that for kidnapping human beings and for stealing quadrupeds, so here also the two classes of thieves have been separately mentioned."

Those several kinds of thieves, prescription of various punishments in the shafe of aggravation or extenuation on whom has been laid down by Nārada in consideration of their varying criminality, ought to be left for discussion in the topic of miscellaneous thefts below. But their classification is not unjustified here.

The word *śasyahara* is, therefore, being explained here as 'the stealer of paddy', having practically ignored the technical definition of the word *śasya*, embodied in the following text from the *paribhāṣā* (i.e. technical terms) chapter, appended to a separate context:

"Crops (*śasyam*) are those, which are standing on the fields, paddy (*dhānyam*) is that, which (though brought home from the field) has not yet been husked, husked paddy is known as rice (*āma*) and boiled rice is called *annam* (literally meaning, 'fit to be eaten')."

The term *prakīrṇāpahārī* means 'a stealer of gems and similar other precious things', as the offence here is concerning things, other than the previously specified bipeds (i.e. human beings), on the authority of the following text of Nārada (*prakīrṇaka* V.4):

"All other offences, not specifically treated in the previous chapters, shall be termed *prakīrṇaka* (i.e. miscellaneous ones)."

If it is said that the robber of a traveller's purse (*pāntha-muṭ*) and similar other thieves, though separately mentioned in the present chapter, might also have been included in the chapter on miscellaneous crimes, as those persons also steal gems and other precious things, we admit the argument. But their separate mention is due to the fact that such robbing a traveller (of his purse) is out and out a crime, quite irrespective of the comparative value of the robbed articles.

So in the cases of kidnapping human beings (or stealing animals), no question of hole-digging (into another man's wall) or its particular methods and implements are taken into consideration, as those enquiries are irrelevant here, just as the value of the article, snatched away from a traveller, is not considered relevant. So Vyāsa and other authorities have laid down the particular methods and implements, utilized in a hole-digging only or the comparative worthiness or value only of the human beings kidnapped or animals stolen, having regard to their comparative relevance. So, even if the digger into another man's wall may by chance get a big or a small quantity of things, the very crime of such digging itself has been made punishable by Manu (IX. 276), as follows:

"He, who (commits) theft by digging into etc".[65a] The author of the Mit. has also expressed the opinion that the heavier punishment prescribed here is owing to the gravity of the offence committed.

[65a] See a little below for an English rendering of the whole verse.

So Govindarāja (another commentator of Manu), while explaining the following text of Manu (VIII. 34), has laid down the similar punishment of death for stealing an article, valued more than one hundred gold coins, on the analogy of another text (of Manu?) viz. 'Sentence of death (is prescribed) for (stealing) more than one hundred':

"When some thing, previously lost but subsequently restored (by the king's men), has been kept in the custody of responsible officers[66] for its safety, those persons, who, coming to steal it, are arrested (on the spot), should be put to death by the king with the help of an elephant."[67]

But Kullūka, finding fault with the above opinion of Govindarāja, has said that like 'stealing by digging into another man's wall' (Manu IX. 276), death sentence must be imposed (on the offender) even in the case of stealing even a small quantity (or number) of articles, originally lost (but subsequently recovered) and preserved by the king, as death sentence has been specifically prescribed here and that the text, authorising the same penalty for stealing more than one hundred (articles, or things valued one hundred gold coins), applies to those very cases only, where specific prescriptions of sentences other than death have been made. So even in the theft of a small amount of wealth by committing the (heinous) offence of wall-digging etc., the prescription of the sentence of death is the settled law'. In the following text of Vyāsa:

A digger into (another man's) wall, when he gets a huge amount of wealth from the house (of that person), should return it in entirety to its owner and should for that purpose deposit it with the king.

D. V. adds that this returning of the (entire) booty is an optional punishment in cases of getting a big amount of wealth (by the criminal).

So Bṛhaspati (XXII. 21a) has laid down: The stealers by digging (into another man's wall) should be compelled to return the stolen property and placed on the stake afterwards (to be put to death).

Kātyāyana (cf. V. 960) has consequently laid down the following punishment even in cases, where the stealing or any other crime has not been fully committed by a thief or any other criminal:

The first punishment for a particular kind of theft is to be inflicted in its very commencement, the middle one in its progressing stage and the punishment, prescribed for an offence, is to be meted out, when it has been fully committed.

[66] Manu reads *tiṣṭhed yuktair adhiṣṭhitam* but D. V. wrongly reads *tiṣṭhetyuktair adhiṣṭhitam* for this portion.

[67] Manu reads *rajebhena* (=*raja*+*ibhena*, *ibha* meaning an elephant) but D.V. misreads it as *rājātena*.

Of the above various kinds of thieves, *the punishment of the wall-digger* has been thus laid down by Manu (IX. 276): The king should cut both the hands of those thieves, who dig into other men's walls and commit thefts at night and should then put them to death by placing them on a sharp pale.

Here the additional punishments of making (the thief) return the stolen article and the proclamation of the offence (by the king) have already been spoken of.

Bṛhaspati (XXII. 21b) has prescribed the following *punishment for a robber of travellers:* (The king) should fasten (a noose) around the neek of the robber of travellers and hang him from a tree.

Both Nārada (cf. *caura* V. 7) and Kātyāyana (V. 820) have laid down: Those, who annoy their own country (*svadeśa-ghātinaḥ*) (by stealing articles) and obstruct the public thoroughfares (i.e. are highway robbers), should have their (*teṣām*) entire property forfeited by the king, who should also impale them on a stake.

D. V. adds the following comments: The king's country is that, which is ruled by him and also inhabited by thieves and those among the latter, who annoy that country (by stealing etc.), are called *svadeśa-ghātinaḥ*. The word *teśām* (i.e. their) means 'of the thieves'. So, if those thieves plunder another (king's) territory, the former king should not confiscate their entire property, as that act (of the thieves) is in his favour. This is the opinion of the Ratnākara (p. 315). Though the Ratnākara has introduced this quotation just after the above-quoted text of Bṛhaspati (p. 314), prescribing the punishment of a *pāntha-muṭ* (i.e. robber of travellers), yet, owing to its insertion in the text (of Nārada and Kātyāyana), laying down the punishment for causing obstruction to the thoroughfares of *one's own country*, it appears that no punishment is to be inflicted on considerations of equity on the kidnappers and stealers respectively of human beings and quadrupeds of *other countries*. The principle laid down in the present text, is thus in consonance with that, laid down in a previously quoted (p. 42 of D. V.) text of Kātyāyana (V. 826), viz. *paradeśāhṛtam dravyam* etc. (i.e. an article, stolen from another country etc.)

ON THE TOPIC OF THE KIDNAPPING OF BIPEDS (i.e. *human beings*)

Manu (VIII. 323) says: One, who kidnaps high-born men and specially women or steals the most costly gems, deserves the punishment of death.

Bṛhaspati (XXII. 22a) also lays down: The kidnappers of human beings are to be burnt (to death) by the king, by setting fire to dry grass (kaṭa), (placed on all their sides.)

Vyāsa also says: The kidnapper of a woman should be made to lie upon a bed of iron and burnt (to death) by setting fire to dry grass, while that of a male person should have his hands and legs cut off and he should be placed at the junction of four roads.

Nārada (*caura*° V. 28) lays down: The punishment of the highest amercement is to be inflicted on a kidnapper of a male person, after (having cut off) both of his hands (*hastau*), that of the forfeiture of the entire property on a kidnapper of a female person and that of death on a similar offender, regarding a maiden. The stealer of horses and elephants and the kidnapper of children are also to be awarded the same punishment of forfeiture of property. This has already been said by Bṛhaspati.

D. V. adds the following long commentary: The Kāmadhenu has read *dṛṣṭam* (i.e. is seen) for *hastau* in the above text [and so according to it the first line of the above text means that "the punishment of the highest amercement is seen (i.e. has been prescribed by the earlier authorities) for a kidnapper of a male person."] The Ratnākara (p. 316) has said that the mutually contradictory punishments, corporal and pecuniary, prescribed in the above several texts for the same offences, involving the same kinds of human beings and animals, are to be reconciled in considerations of the higher or lower caste of the kidnapper or stealer, their opulence or poverty, and the comparative value of the[68] stolen (article and animal or relative worth of the kidnapped human being).

So it appears that Manu (VIII. 323) has only laid down in general terms the sentence of death for kidnappers of men and women, which punishment may be inflicted in many ways, such as by the simple or the complicated method. So Bṛhaspati has advised the infliction of this (capital) punishment, by surrounding the body of the criminal with dry grass and then setting fire to it (to burn him alive). This particular method of carrying out death-sentence is in consonance with the import of the text of Vyāsa, beginning with the phrase, viz. 'the kidnapper of a woman' (*strīhartā*) and containing the mention of the requisite 'iron bed' (*lohaśayane*) (to be used in inflicting this punishment of burning the kidnapper of women to death). So it further appears that death-sentence having thus been unanimously laid down for kidnappers of women, the carrying out of the same punishment, prescribed by Vyāsa for kidnappers of male persons also, as is evident from the latter part of his text, beginning with the phrase viz. *nara-hartā* (i.e. a kidnapper of male persons), is to be done, after having effected the mutilation of the

[68] D. V. reads *hāryutkarṣa* etc. and Ratnākara reads *kāryotkarṣa*° but it should be *hāryotkarṣa* (i.e. *hārya* [the stolen article] +*utkarṣa*).

hands and legs of the wrong-dóer and subsequently placed his body at the junction of four public roads, which punishment is but another form of impaling the offenders. The punishment of death (for kidnappers of male persons also) having thus been confirmed, an option lies between death-sentence (prescribed in the text of Vyāsa) and a lesser punishment (of mutilation of both the hands only, along with the fine of the highest amercement), as laid down by Nārada in the above-quoted text, beginning wth the word *puruṣam* (*harato*) (i.e. of the kidnapper of a male person), on the authority of the following (anonymous) text viz. 'The principle of option is to be relied upon in law (*smṛti-śāstra*), when the conflict (between several authoritative texts) has been (apparently) dissolved.' In the present case, the option is to be exercised in cases involving women and grown-up men. Thus, the specific prescriptions by Vyāsa (Nārada?) of the punishments of death and forfeiture of property for kidnapping unmarried girls and children respectively are not at all contradictory, as the two offences are concerning two different classes (of the persons kidnapped).

Thus the kidnapper of a married woman should be made to lie upon an iron bed and put to death, by burning him alive with the fire, kindled with dry grass and that of adult male persons should have his hands and legs cut off and he should then be impaled to death. This is one sort of punishment. Another sort is the cumulation of the corporal punishment in the form of mutilation of hands and legs and the pecuniary punishment in the shape of the highest amercement of the latter class of criminals, described above and confiscation of the entire property of the former class. The somewhat contradictory character of the above two sorts of punishments may be thus resolved: The first set applies only to the cases of high-born adult men and married women, on account of the occurrence of the word *kulīnānām* (i.e. of those, who belong to high families) in the above-cited text of Manu (VIII. 323) and the second set holds good in the cases of (adult) men and (married) women of ordinary families.

In cases of *kidnapping men and women of royal families*, Śaṅkha-likhita have laid down the following special rule: For kidnapping a prince (*rājaputrāpahāre*), the punishment is the imposition of a fine of one thousand and eight (*paṇas*) or (any sort of) corporal punishment; for committing the same offence regarding the sons of other relations of the king as well as other members, male and female, of the royal family, half of the above fine or an appropriate corporal punishment is the proper penalty.

D. V. adds the following comments: The word *aṣṭasahasram* in the above text means 'one thousand *and* eight' *paṇas*, meaning, according to the *chapter on technical terms* (*paribhāṣā*), *Kārṣāpaṇas* according to the Ratnākara (p.

316). The above interpretation is right, as is evident from the concluding portion of the above-quoted text of (Śaṅkhalikhita), which means: Twelve and a half *paṇas* and three *kārṣāpaṇas* are (the respective fines) for stealing a goat or a sheep and a mongoose or a cat respectively. Thus in the above latter portion of the text the *kārṣāpaṇa* and the *paṇa* mean the same thing, for if we take the former as synonymous with a *purāṇa* (which is a silver coin), there arises the objection of the application of a heavier punishment for stealing mongooses and cats, which are decidedly smaller creatures than goats and sheep.

The Kāmadhenu has read *rājaputrāpahāreṣu* for *rājaputrāpahāre* in the above text. The optional punishments viz. corporal and pecuniary, prescribed in the above text, are to be reconciled as being applicable to the cases of criminals, poor and rich respectively, according to the Ratnākara (p. 316). So it is evident that the final import of the above text is that in view of the gravity of the offence of kidnapping members of the royal family than that of doing so regarding members of ordinary families, both the pecuniary and corporal punishments are to be inflicted, as the particle *vā*, put in the phrase *śārīro vā* (of the above text), has been used here in a cumulative sense (and not in an alternative sense, as interpreted by the Ratnākara).

IN CASES OF KIDNAPPING MEN-SERVANTS AND MAID-SERVANTS

Manu (VIII. 342b) lays down: A kidnapper of (other person's) servants and a stealer of (other men's) chariots and horses shall have to receive the punishment, appropriate for a thief (of consumers' articles) (*caura-kilviṣam*).

Nārada (cf. *caura*° V. 33) also says: He, who cuts the portion just above the heel of cows, belonging to the households of Brāhmaṇas (i.e. owned by Brāhmaṇas) or kidnaps maidservants (similarly owned by a Brāhmaṇa), shall be punished by the fine of the middle amercement and also the mutilation of his leg.

D. V. adds that as a higher punishment has been prescribed for a kidnapper of a maid-servant, belonging to a Brāhmaṇa, it is apparent that a similarly heavy punishment, befitting a thief, is to be meted out to kidnappers of Brāhmaṇa-owned men-servants also. This punishment may be either corporal or pecuniary and ordinarily heavy, while such offences, committed in respect of cattle or servants, owned by persons, other than Brāhmaṇas, will necessarily entail lesser punishments upon the offenders.

IN CASES OF STEALING QUADRUPEDS

The same authority (i.e. Nārada) (*caura*° V. 29) says: The corresponding

punishments for the thefts of big, medium-sized and small animals (belonging to others) are the fines of the highest, middle and first amercements.

D. V. adds that the big animals are the elephant and similar other beasts and the medium-sized are the bulls etc., and that all these animals are exclusive of the big beasts, specially enumerated below (for purposes of punishments to be inflicted on their kidnappers).

Manu (VIII. 342 and 324) has laid down: "He, who ties up (*sandātā*) the legs of animals having their legs untied (*asanditānām*) or loosens (*vimokṣakaḥ*) them, if tied together (*sanditānām*) or kidnaps (other persons') servants or steals (other men's) horses or chariots, shall be punished with the penalty of a thief." "The king should take punitive measures in cases of theft of big animals, weapons and medicines, in considerations of the time and urgency of the utilization (*Kāryam*) of the animals and articles stolen."

D. V. adds the following long commentary: The words *sāndātā* and *vimokṣakaḥ* respectively mean 'he, who ties up (the legs) of (those animals for stealing them) and 'he, who loosens them with the same intention'. The word *caurakilviṣam* means 'punishment, fit for a thief, which may be either corporal or pecuniary, and may thus be either death or mutilation of limbs, or imposition of fines' according to Kullūka Bhaṭṭa in his commentary on Manu. But Nārāyaṇa has interpreted the former of the above two verses in the following different way:

"A person, who employs as beasts of burden and conveyance the animals, let loose with their legs untied by their owners and thus become ownerless", is called a *sandātā*, while a *vimokṣaka* is "one, who lets loose animals, belonging to other persons and with their legs tied up by them, with the evil intention of acting inimically towards their owners." 'A kidnapper or stealer of other persons' servants or chariots and horses' implies "one, who entices the former (i.e. the servants) (along with the chariots and horses) and compels them to do one's own work." Though not technically thefts, these actions amount to thefts by force of analogy.

The above interpretation is also acceptable, as, though these actions are not really thefts, they become so by analogy and there is, therefore, no conflict of this interpretation (with that of Kullūka, quoted just above). Such analogical thefts are also punishable like real thefts.

The words *kālaḥ* (i.e. time) and *kāryam* (i.e. urgency) respectively mean 'time of war or peace' and 'the comparative utility (of the animals or articles stolen)'.

Having taken all these facts into consideration, such as whether those animals or things have been snatched away (by the aggressors) in proper times of their use (for public benefit) or for their pretended (i.e. dishonest)

use, whether the horse, elephant and similar other animals are inherently comparatively important, one over another or whether they are meant to be put to further big or small purposes, the king should inflict upon the stealers of quadrupeds a light or heavy or heavier penalty—this is the real import of the above two texts (of Manu), taken together (cf. Ratnākara, p. 316).

Yāj. (II. 273) has thus laid down (some of) the *heavier penalties*: (The king) should impale the kidnappers (of human beings), the stealers of horses and elephants and the forcible murderers.

Vyāsa also has said: The stealer of horses should have his hands, legs and waist mutilated and thus put to death.

Vyāsa (Nārada') has thus exemplified a *heavy punishment* in the following half-verse (already quoted above, along with a full verse and explained by D.V.):

Bṛhaspati has laid down the punishment (of the forfeiture of the entire property) of the stealers of horses, elephants and minors.

Viṣṇu (V. 77) has laid down: The stealer of a cow, a horse, a camel or an elephant should have one each of his hands and legs cut off (by the king).

Saṅkhalikhita have thus given an example of *light punishment* : The punishment for stealing chariots,[69] drawn by elephants or horses, or carts,[70] pulled by cows and bulls, is equal to that of kidnapping a royal prince.

D.V. adds: The punishment in the above cases is thus a fine of one thousand and eight *paṇas* or (any kind of) corporal punishment. But the previously prescribed punishment of death is to be inflicted on the stealer by means of binding, letting loose or doing similar other (objectionable) actions, relating to big animals, when the utility, speciality or physical bigness of the stolen animal is of the highest order. In cases of committing theft[71] of animals, which are comparatively neither very big nor very useful nor highly special ones, the punishment of forfeiture of property or mutilation of hand and leg is to be inflicted on the thief. When such thefts are in relation to the lowest type of such animals or things in point of utility etc., the proper punishment is the imposition of the fine of the middle amercement.

Nārada[72] (cf. *caura*° V. 33) says: In cases of the cutting off the portion just above the heel (*sphurā*), [of cows, owned by Brāhmaṇas (*goṣu*

[69] Supplied from the (Vivāda)-ratnākara. (p. 316). D. V. omits *ratha* (meaning 'a chariot').

[70] D. V. has misprinted° *vṛṣa-yāneṣu* as *vṛṣāyaneṣu.*

[71] D. V. misreads *tad-apakāre* for *tad-apahāre* (meaning 'in theft of which').

[72] The English rendering has been made here after supplying from the Ratnākara (p. 317) the missing second line of this quotation from Nārada, as printed in D. V,

brāhmaṇa-saṁsthāsu)] and kidnapping maid-servants, the thief shall have to pay the fine of the middle amercement and suffer mutilation of one of his legs.

D. V. adds that the seventh case-ending has been used in the words *go* and *brāhmaṇa-saṁsthā* to mean the sixth case-ending, (i.e. '*of* the cows, belonging to Brāhmaṇas).

Bṛhaspati (XXII. 22b) also says: (The king) should cut off the nose of, bind and then drown the stealer of cows (*go-hartā*) into water.

D. V. adds: The word *go-hartā* is an archaic use (*ārṣa-prayoga*) in the first case-ending for the second case-ending. The cows, spoken of here, are to be understood as referring to good cows, owned by Brāhmaṇas and fit for performing sacrifices with. The above text is found in the Kāmadhenu.

Manu (VIII. 325) lays down: In case of cutting off the portion just above the heels of cows, owned by Brāhmaṇas and in the theft of beasts (*paśūnāṁ*), the wrongdoer should have half of each of his legs immediately cut off (*ardha-pādikaḥ*, as interpreted by Nārāyaṇa).

D.V. adds: According to the Ratnākara (p. 318) the beasts (*paśavaḥ*), spoken of here, are small animals other than goats, sheep, cats and mongooses. So, it seems that they mean medium-sized animals. According to the interpretation of Nārāyaṇa, the beasts here include buffaloes and similar other animals, owing to their mention along with that of Brāhmana-owned cows. There is thus no contradiction of this text (of Manu) with the previously cited text of Nārada, as this latter authority also practically means the same thing. In fact, the word *go* (i.e. a cow) in the text of Nārada means 'a good (and very useful) cow', and the same word in the present text of Manu means 'a comparatively inferior cow' and also the word '*paśu*' (i.e. a beast) in this text refers to 'a cow and similar other animals of inferior quality and belonging to persons, other than Brāhmaṇas'. So no contradiction arises between the above two texts.

Vyāsa also says: The stealer of beasts should have half-portions of both his legs cut off with a sharp weapon (*tīkṣṇaśastreṇa*).

D. V. adds that (Vācaspati) Miśra (p. 134 of V. C.) has read *a-tīkṣṇa*° (i.e. not very sharp) for *tīkṣṇa*° in the above text and interpreted the term as "'a blunt' weapon, a spade and similar other implements".

Śaṅkha-likhita (once quoted above) have also laid down: (The punishment) for stealing goats and sheep is a fine of twelve and a half *paṇas* and three *kārṣāpaṇas* is the fine for stealing mongooses and cats.

Viṣṇu (V. 78) also says: The stealer of goats and sheep should get the punishment of mutilation of one of his hands.

D. V. adds that according to the Ratnākara (p. 318), the conflict between

the above two texts can be reconciled by assuming that the text of Viṣṇu relates to a poor thief or the goat or sheep, stolen by him, is fit for performing sacrifices with.

ON THE TOPIC OF THE PUNISHMENTS FOR *Utkṣepakas and Granthi-Bhedakas*

Vyāsa has laid down: (The king) should (punish) the *utkṣepaka* (i.e. the stealer of movable property before the very eyes of its guards) and the *granthi-bheda(-ka)* (i.e. the snatcher of a traveller's purse) by cutting off their thumb and second finger taken together (*sandaṁśa*).

Manu (IX. 277) also says: Two fingers (*anguli*) and one hand and one leg (*hastapādau*) of the robber of a traveller's purse are to be cut off (by the king) in the first and second commissions respectively of the above offence, while in the third commission the above-mentioned criminal deserves death-sentence.

D. V. adds: According to Nārāyaṇa, such enhancement of punishment is also to be made in cases of repeated commission of other crimes. The word *anguli* (i.e. two fingers) means 'the thumb and the index or the second finger'. Though the above text (of Manu) has laid down this punishment, concerning 'a robber of a traveller's purse', yet it also applies to 'a stealer of movable property before the very eyes of its guards', as both of the above criminals belong to the same category and have been mentioned together (in the previous text of Vyāsa and the following text of Yāj.).

Thus Yāj. (II. 274) also says: The stealer of movable property before the very eyes of its guards and the robber of a traveller's purse are to be made destitute of their *sandaṁśa* (i.e. the thumb and the second finger taken together) (in the first commission of those offences) but should lose one each of their hands and legs in the second commission.

D. V. adds: The author of the Mit. has expressed here the following opinion:

The above text of Yāj. is concerning those kinds of robbery, which deserve the pecuniary punishment of the highest amercement, on the authority of the following text of Nārada: "The mutilation of that very limb (*tad-anga-cchedaḥ*) may be substituted by the fine of the highest amercement."

The above view is questionable, as it conflicts with the earlier view, expressed by the author of the Mit. himself in the following terms on the interpretation of the text viz. "the (pecuniary) punishment, amounting to double of the value of the article involved (is to be imposed)", occurring in the section on *sāhasa* (i.e. high crimes):

"The infliction of the (pecuniary) punishments, beginning from the first amercement, is in connection with offences other than theft (and robbery)".

Moreover, Yāj. (II. 297) has himself prescribed the mutilation of hands etc. of the offender in cases of selling forbidden meat, which is not a *sāhasa* (i.e. a high crime). So the above text of Nārada (quoted by the author of the Mit.) has been meant to be utilized in other topics and its statement in general terms is in connection with topics, not coming within the purview of specific punishments. So the portion *tad-anga* (of the word *tad-anga-cchedaḥ*, occurring in the above text of Nārada) has been explained in all the previous digests as 'the limb, connected with the commission of the *Sāhasa* (i.e. high crime).' The commission of the crimes of robbery before the very eyes of the guard of a property and of robbing a traveller is neither feasible by the thumb and the second finger only (of the criminal) nor is the latter's leg necessary for such commission nor is there any occasion for the cumulation of various punishments here. The above interpretation (of the author of the Mit.) is, therefore, wrong, in view of the absence of any (authoritative) text (in its favour) or of any circumstances, necessitating the aggravation of the prescribed punishment here, amounting to the non-existence of any authority for interpreting it in that manner. As the specific prescription of the cutting off the *sandaṁśa* (of the offender), convicted of robbing a traveller's purse or stealing (a thing) before the very eyes of its guard, has been made here (in clear and unambiguous terms), so the construction of the above text of Yāj. does not stand in need of importation of extraneous matters.

Bṛhaspati (XXII. 24) has thus laid down on the *theft of paddy*: The stealer of paddy is to be made to pay ten times the value of the paddy stolen (as compensation to its owner) and twice that amount as fine (to the king).

Manu (VIII. 320) has also said: Sentence of death is (the proper punishment) for stealing paddy, more than ten *kumbhas* but payment of fine, amounting to eleven times its value in stealing paddy less than ten *kumbhas* is to be ordered and the booty should also be decreed to be returned to the owner.

D. V. adds: According to Ratnākara (p. 320), a *kumbha* consists of twenty *prasthas* but according to the author of the Mit., it is made up of twenty *droṇas*. Kullūka Bhaṭṭa has also said that a *kumbha* consists of twenty *droṇas*, a *droṇa* being equal to two hundred *paṇas* (or *palas*?). The interpretation of the term *kumbha* by the Gopatha-Brāhmaṇa as equal in measure with a *ghṛta-droṇa* holds good in cases of such liquid substances as *ghṛta*, i.e. ghee.

The following anonymous text, containing the definition of various graded standards of measure, beginning with a *māṣaka*, which is equal in weight with

five *kṛṣṇalas*, is being quoted here: A *pala* is made up of sixty-four *māṣakas* and thirty-two *palas* make a *prastha*—this has been said by Atharvan himself. An *āḍhaka* consists of four *prasthas* and four *āḍhakas* make a *droṇa*.

The Skandapurāṇa, however, says: A *prasṛti* consists of two *palas* and two *prasṛtis* make a *kuḍava*. Four *kuḍavas* make a *prastha*, four of which make an *āḍhaka*.[73] Four *āḍhakas* make a *droṅa*. This is the list of measures of articles.

D. V. adds: (People) use this *droṇa* as a full (standard) vessel. The above text has been quoted in the *Caturvarga-cintāmaṇi* (of Hemādri), prefaced with the word '*Skandapurāṇam*'. After having quoted the above enumeration of the measures, beginning with *prasṛti* and ending with *droṇa*, the Bhaviṣyapurāṇa says: A *kumbha* consists of two *droṇas* and sixteen *droṇas* (or *sūryas*) make a *khārin*.

D. V. adds that *sūrya*, read by some as *sūrpa*, is another name for *droṇa*.

After having cited the above measures, beginning with *kuḍava* and ending with *droṇa*, the Viṣṇudharmottara has laid down: Sixteen *droṇas* make a *khārin* and twenty *droṇas* make a *kumbha* but in measuring paddy (*dhānya*), a *kharin* consists of ten *kumbhas* only.

D. V. adds that according to the author of the Mahārnava, the mention of the word *dhānya* in the above text implies the inclusion of barley and similar other grains and also liquids (in the above list of requisite measures), on account of the general description (of such articles) in the above text of the Skandapurāṇa.

Caṇḍeśvara says in the Bālabhuṣaṇa: *Kuḍava*, *prastha*, *āḍha* (or *āḍhaka*), *droṇa* and *khārin* are successively four times of the just following one and a *kumbha* consists of twenty *khārin-s*—this is found current in the world (*loke*).

D. V. adds that the word *loke* means in Mithilā (i.e. modern North Bihar) and adjoining parts (of the country). So we find that a *kumbha* measure is of two kinds, viz. consisting of two *droṇas* and of twenty *droṇas* respectively. But the *Dānaviveka* has defined it as consisting of a thousand *paṇas* (*palas*?). So we see that the word *kumbha* is used as several kinds of measure.

The Varāhapurāṇa says: Two *palas* constitute a *prasṛti*, while a single *pala* makes a *muṣṭi*. Eight *muṣṭis* make a *kuñci*, eight of which make a *puṣkala*. Four *puṣkalas* are collectively known to be an *āḍhaka*, four of which make a *droṇa*. This is the list of the measures. A *prastha* again is known to be a collection of four *serikās*.

[73] D. V. reads *āḍhakāiḥ*, which should be *āḍhakaḥ*.

D. V. adds: Hemādri (the author of the Caturvargacintāmaṇi) has defined *serikā* as a *kuḍava* and the Kalpataru has also said that a *serikā* is tantamount to a *kuḍava* and consists of twelve *prasṛtis*.

The Samaya-prakāśa, Ratnākara and Smṛtisāgara have said that twelve *prasṛtis* make a *serikā*, four of which make a *prastha*. But the Bhūpala-paddhati (a work of the king Bhojadeva?) has expressed the opinion that the standard length (*prasṛti*) of the hand or leg of a man of standard height (pramāṇastha-puru*ṣasya*) makes a *prasṛti*, twelve of which make a *kuḍava* and a *kuḍava*, multiplied successively by four, makes a prastha, an āḍhaka and a droṇa respectively and so sixty-four *kuḍavas* make a *droṇa*. The author of the Kalpataru also holds the same view.

After having quoted the following two verses viz. "Five *kṛṣṇalas* make a *māṣa*, sixty-four of which make a *pala*. Thirty-two *palas* make a *prastha*—this is current in (*māgadheṣu* i.e.) the country of Magadha (i.e. Modern South Bihar). A *droṇ* consists of four *āḍhakas*." and "The standards, current in Magadha, are said to be the best," some digest-writers have interpreted the above standards of measures as current in Magadha only. This view is incorrect, as according to the import of the above-quoted remark of the Gopatha-Brāhmaṇa and the consequent universality of those standards, the word '*māgadheṣu*' means the only *standards* 'current in the country of Magadha' (and nothing more). Thus, it is to be borne in mind that the comparative superiority of the above standards is not owing to the bigness of the measures but owing to their being based on Vedic authority.

In the previously quoted text of Manu (VIII. 320) the prescribed sentence of death may be carried out in three forms, viz. harassment, mutilation of limbs and death proper. According to Kullūka Bhaṭṭa the option in the employment of the three forms is in consideration of the comparative worthiness or otherwise of both the thief and the master (of the paddy). But Nārāyaṇa has said that the sentence of death, (laid down in the above text of Manu), (ordinarily) means 'harassment etc.' but 'mutilation of limbs etc.', only when the theft has been committed of a Brahmana's property. The author of the Mit. has, however, expressed the opinion that the option is to be exercised after taking into account the comparative worthiness of the thief and the owner and the time of the commission of the theft in normal times or in times of famine. The controversy about the number of *kumbhas* (for assessing the relative culpability of the thief) should also be thus resolved. According to the Ratnākara (pp. 320-321), the word *śeṣe* in the above text means 'much less than ten *kumbhas*' and the phrase '*tasya ca tad-dhanam*' implies that the owner should be compensated for the loss, suffered by the theft

(*svāmino yad apakṛtam*[74] *tad dāpya ityarthaḥ*). The payment of fine, eleven times of the value of the paddy stolen and also returning to the owner the same amount of paddy (or its price), as laid down in the text of Manu (VIII.320), are to be construed as relating to the first commission of this offence. But the payment of fine, twice the value of the paddy stolen and compensating the owner by returning to him ten times of the booty, as preseribed by Bṛhaspati (XXII.24), is concerning the repeated commission of the above theft. So there is no conflict between the two prescriptions, according to the Ratnākara.(pp. 320-321).

So Manu (VIII. 331) says: (In cases of misappropriating) paddy grains, (*paripūteṣu*) kept in a brushed condition (in the barn), vegetables, esculent roots and fruits by an unconnected person (*niranvaye*), the (pecuniary) punishment of a hundred (*paṇas*) shall be imposed on him but fifty (*paṇas*) only on a connected person (*sānvaye*).

D. V. adds the following comments: According to the Kalpataru, the word *paripūteṣu* means 'having the weeds on them brushed off' and the word *niranvaye* mplies '(left) without guards'. But the Ratnākara (p. 323) has interpreted the latter word as 'without any friendly connection (with the owner), (apparently) authorising such misappropriation.' The word *haraṇe* (i.e. in cases of misappropriation) is to be understood in both the above kinds of punishments. Nārāyaṇa also says that when the taking is not done after stating one's relationship, such as agnatic, with the owner, it is a *niranvaya* one and the opposite is the *sānvaya* one. According to the Ratnākara (p.323), Manu's prescription of the sentence of death in stealing more than eleven (ten ?) *kumbhas* of paddy and of the payment of fine, amounting to eleven times of the stolen thing, in doing so regarding less than ten *kumbhas*, is concerning the pilfering of paddy, stacked in a house. The present punishment in the form of fine of a hundred (*paṇas*) (or of fifty *paṇas*) is to be inflicted if the offence is committed in respect of paddy, spread on the threshing floor. Kullūka Bhaṭṭa is also of the same opinion.

The same authority (i.e. Manu VIII. 330) further says: The punishment for stealing even small quantities of flowers, green paddy, shrubs, creepers and trees and other cereals, the weeds of which have not yet been cleared off, shall be five *Kṛṣṇalas*.

D. V. adds: The phrase '*harite dhānye*' (i.e. green paddy) means 'of the field, being stolen as grass (i.e. fodder for the cattle)'. But Nārāyaṇa has explained it as *māṣas* and other pulses. The word *alpeṣu* (i.e. small quantities) is to be understood as 'less in weight than the maximum burden for a

[74] D. V. has misprinted *apahṛtam* as *apakṛtam*.

single person' and the word '*aparipūteṣu*' implies 'the weeds of which have not yet been cleared off'. The *kṛṣṇalas* are to be taken as 'made of gold', according to the explanation of technical terms (*paribhāṣā*), supplied (by us) in an earlier chapter. But Kullūka Bhaṭṭa has said that they may be made either of gold or of silver according to the time and place, (in relation to which they are mentioned).

Manu (IX. 280) says: Those, who break granaries (*kosṭhāgāram*), armouries and temples, and steal [75] elephants, horses and chariots, shall be forthwith put to death.

D. V. adds the following note: The word *kosṭhagāram* means, according to Ratnākara (p. 318) 'a granary of rice-grains' but implies, according to Nārāyaṇa in his commentary on Manu, 'a royal palace'. The word *avicārayan* means 'not making any delay, when that offence has been proved beyond doubt' (cf. Ratnākara, *loc. cit.*). As the breaking of the walls and digging into the foundations of granaries etc. are in the nature of digging holes in others' premises (*sandhi*), so persons, convicted of that offence, deserve the punishment of a hole-digger (*sandhi-cchid*). Simple (i.e. beginning of) digging will be dealt with in the miscellaneous portion in the topic of the 'first commission of crimes' but the addition of the participial form '*bhedinaḥ*', which indicates 'a habit (of doing so)' (for the primary suffix 'nini' has been tagged to the root '*bhid*'), necessitates sentence of death on the culprit for his repeated commission of the above offence of breaking (granaries etc.) for purposes of checking his bad habit beforehand. We may alternatively interpret the above-mentioned crime of breaking (*bhedanam*) as theft, pure and simple, as the text is included in Manu in his topic on theft. The Kāmadhenu, the Kalpataru and other digest-writers have also included the above verse in their respective chapters on theft. Thefts of ornaments and other valuables are also possible in temples like those of Jagannātha (in Puri, Orissa).

The same authority (i.e. Manu, VIII. 325) further repeats a text, already cited him above (on p. 131, D.V.): In the breaking of the burden (*sthūrikāyāśca bhedane*), after having stolen cows, belonging to Brāhmaṇas (*brāhmaṇa-saṁsthāsu*) and in the theft of other beasts, (the offender) should be immediately made to suffer the cutting off of the half portions of his two legs.

D. V. adds: The word *brāhmaṇa-saṁsthāsu* means '*brāhmaṇa-sambandhinīṣu*', i.e. belonging to Brāhmaṇas, and the word *hṛtāsu* (i.e. being stolen) should be supplied here according to the context. The term *sthūrikā* in the word *sthūrikāyāśca* means 'the burden, borne by bulls, buffaloes and similar

[75] D. V. has misprinted° *hartṝś ca* as °*hantṝś ca*.

other beasts on their back'. According to the dictionary of verbal roots, the roots, *sthūla* and *spbūla* mean 'carrying', to the former of which the pleonastic affix of *kan* has been added, the ending vowel *a* has been changed in *i* on the authority of the grammatical rule '*sthāt*' (i.e. the ending vowel of roots beginning with *stha* changes into *i*) and as *ra* and *la* are considered interchangeable, sthūla has been ultimately changed into *sthūrikā* which is commonly known as *goṇi*. So the phrase *sthūrikāyāśca bhedane*, means, 'by breaking that (i.e. *sthūrikā* or *goṇi*), i.e. for the purpose of stealing paddy from it.'

The interpretation of the above phrase by Kullūka viz. 'for piercing the nose of a barren cow for the purpose of making her fit for carrying burdens' —is not acceptable, as it lacks both familiarity with the present reading[76] and knowledge of the things involved in the above text. Piercing the nose (of a cow) is not a thing so involved and is, moreover, irrelevant to the context. If we accept the above interpretation of Kullūka, then the explanation of Nārāyaṇa to the following effect becomes faulty: 'In the breaking of the burden of the *sphūrikā* (which is synonymous with *sthūrikā*), meaning the burden (on the back) of the carrying bull.'

Thus, the following interpretation of the Ratnākara (p. 318) is also to be dispensed with: A *sphūrikā* is a 'barren cow' and *bhedanam* means 'piercing into the nose'.

The same authority (i.e. Manu VIII. 243) lays down: The punishment, to be imposed on the owner of a field, who is also the tiller of its soil, for his lapses (*atyaye*), should be ten times of the quantity, which is the (king's) share (as revenue). But if that offence has been committed by the hired men of the owner of the field and without the knowledge of the latter, the punishment to be inflicted on those men shall be half of the above (i.e. five times the revenue).

D. V. adds: According to Ratnākara (p. 320), if the loss of the king's share (as revenue) occurs owing to the lapses of the farmer, the latter, who thereby becomes a stealer of paddy and other[77] crops, is to be fined eleven (ten?) times the lost revenue. But Halāyudha has said: when, due to the *atyaya* i.e. faults of the owner of the field, corresponding fault (i.e. less production) occurs in the crops, the king should fine him ten times his share of those crops, but when such loss of crops results from the shortcomings of his

[76] Manu reads *khurikāyāśca* etc. and not *sthūrikāyāśca*. See above for a different reading of the same word and different interpretation of the entire verse.

[77] Ratnākara reads *dhānyāpahārī ekādaśaguṇaṁ daṇḍyaḥ śasyāpahārī ca* but D. V.

servants and without his knowledge, the servants only shall be fined half[78] of the former amount of fine.

PUNISHMENT OF THE THIEVES OF MISCELLANEOUS ARTICLES

It has already been said that the term *prakīrṇa* (i.e. miscellaneous) is applicable to gems etc., outside the bipeds (i.e. human beings) etc., described above. The miscellaneous articles are of three kinds, beginning with the best.

Nārada (*sāhasa* VV. 13-16) says on this topic: the wise men have divided, according to their inherent worth[79] (*dravyāpekṣam*), such (miscellaneous) articles into three categories, such as the trivial, the middling and the best, regarding which thefts can be committed.

The same author has thus enumerated all such articles in due order: Earthen pots, ordinary seats, cots, wood, leather, grass, *śamī* kind of paddy, boiled rice— these are known as the trivial things. All kinds of wearing apparel except those, made of silk, all the beasts, excepting the cow, all the metals (*lauham*) but gold, paddy and barley—these belong to the middling group. Gold, jewels, silk, human beings, both male and female, elephants and horses and the things, belonging to gods, Brāhmaṇas and kings, are to be considered as belonging to the best class.

D. V. adds notes on some of the words, used in the above text: *Śamī* kind of paddy, grown out of *śimbī* and similar other stalks, is another name of the *mudga* and similar pulses. The word *lauha* means all metals (and not only iron). The things, belonging to gods, though sometimes trivial i.e. insignificant, are to considered the best of this lot, according to the author of the Smṛtisāra. Graheśvāra Miśra is also of the same opinion.

Bṛhaspati (XXIII. 3) also says: Such (miscellaneous) articles are of three kinds, viz, inferior, middling and superior and the corresponding punishments for stealing them are the first, middle and highest (amercements) respectively.

D. V. adds that though the fines of the first and other amercements have been prescribed in this text for stealing the inferior (i.e. the trivial) and other kinds of things, yet the respective inferiority (i.e. triviality) or superiority of the things stolen must be taken into consideration to pronounce the proper amercement, which may be more or less than the prescribed ones for the theft of the things concerned.

The same author (XXIII. 5-8) has thus exemplified the above principle: One, who destroys or misappropriates implements of agriculture, bridges,

[78] D. V. has misprinted *tad ardhena* as *tad arthen*.
[79] D. V. wrongly reads *sarvāpekṣam* for *dravyāpekṣam*.

flowers, esculent roots and fruits, shall be punished with (the fine of) *paṇas*, beginning from one hundred, according to the circumstances of the particular cases. A person, who kills or damages beasts, wearing apperel, food and drink and the requisites of a household, should be punished as a thief with a fine up to two hundred *paṇas*. Male and female persons, gold, jewels, the wealth, belonging to gods and Brāhmaṇas and silk are the best kind of things and the punishments for stealing (or kidnapping) them are according to their prices (and economic values). The king may also order the payment of double their prices in consideration of (the pecuniary condition of) the offender (*puruṣāpekṣayā*) and may even pronounce the verdict of death on him to stop the recurrence of the crime.

D. V. adds: According to the Ratnakara (p. 349), the punishments, specified in the expressions, *Śatādyam* (beginning from one hundred) and *dviśatāntam* (up to two hundred) are to be appropriately inflicted, according to the value of the things, destroyed or stolen and also in consideration of the time and place of the above acts (of destruction or theft) and the (physical) capacity (of the culprit). The term *puruṣāpekṣayā* means 'in consideration of the pecuniary condition (of the offender)'. So the punishment for (stealing or destroying) a thing of nominal value is its very price and that for an article of substantial value is twice its price. But in cases of things or living beings, where there is no price fixed (or possible to be fixed), death is the proper punishment for checking the repeated commission of the theft of such things, according to the Ratnākara.

D. V. continues by remarking: Manu (IX. 280) (quoted and explained earlier) contains among others the term *āyudhāgāra* (i.e. a repository of weapons, i.e. an armoury), where by the insertion of the latter portion of the term, viz. *āgara* (i.e. a house or a repository), the former portion, viz. *āyudha* (i.e. weapons) should be constred as 'belonging to the king'. The punishment, prescribed here, seems to be in connection with the repeated commission of this offence (of breaking an armoury).

The following text of Bṛhaspati (XXII. 25) also is in relation to the recurrence of the offence: Anyone, who takes grass, wood, fruits or flowers (of another person) without asking him (i.e. securing his permission), deserves the punishment of the mutilation of his hand.

D. V. adds that the option between the payment of fines, amounting to the actual prices or twice or five times the prices for the above offence of stealing the most trivial things such as grass etc. and the mutilation of a hand of the thief is highly inappropriate and must be reconciled as the latter penalty being applicable to cases of repetition of the offence only.

The following text of Kātyāyana (V. 822), containing as it does the

additional clause '*na karoti yathā punaḥ*' [i.e. so that (he) may not repeat (the above offence)], manifestly refers to the recurrence of the crime:

"The very limb, by means of which, a thief commits (financial) injury to others, shall have to be mutilated by the king, *so that he may not repeat the above offence.*" Thus, even the texts on punishment of offences, containing no such specific clauses, should be interpreted in the above way, having regard to the manner of punishment, prescribed therein.

The following text of Yāj. (II. 275) is also to be interpreted likewise: The punishment for stealing inferior, middling and superior things should be inflicted according to the comperative worth of the article stolen and in consideration of the time, place (of the commission of the crime) and age and capacity (physical and financial) (of the culprit).

In the interpretation of the following text of Nārada (Sāhasa V. 21) the Ratnākara (p. 327) itself has said that this analogical application of punishments (for offences, ranging from high crimes to thefts) is to be made in relation to inferior, middling and superior articles, when the punishments, so inflicted, are not in conflict with other different penalties:

The very punishments, prescribed by the wise men in cases of high crimes (*Sāhaseṣu*) of the three kinds, are to be inflicted respectively on the thefts of the three kinds of articles.

The same authority (i.e. Nārada) (cf. *caura*° V. 25) has laid down on the *theft of the superior things* among the above three kinds: In cases of stealing all the articles weighed (*tutā-dharimameyānām*) or counted (*gaṇimānāñca*), which are definitely costlier than the previously mentioned articles (*ebhiḥ*), the punishment is the imposition of fines, ten times the value of the article stolen.

D. V. adds: The expression '*tulā-dharima-meya*' means 'those articles, which are sold after weighing them in a balance (*tulā*), such as camphor, rice-grains etc'. The measurement by means of *prastha* and other measures comes within the purview of the above-described act of weighing. The word *gaṇima* implies 'betel-nuts' and similar other things, which are generally sold after counting them by twenties. The word *ebhiḥ* indicates 'the previously described wood, (earthen) pots etc'. The superior character of the things, referred to here, is proved by their prices being higher than wood, (earthen) pots and similar other things, specifically mentioned above.

Manu has laid down in the following two texts (VIII. 321-322) the variations to be made in punishments (to be inflicted on thieves) in accordance with the superiority or inferiority of the articles stolen: The sentence of death[80] is to be inflicted on (the stealers of) articles, which are sold after

[80] D. V. reads *damaḥ* here for *vadhaḥ*.

weighing them in scales and balances, such as gold, silver and similar other precious things, and costly cloths, each of them weighing over one hundred *palas* and the punishment of mutilation of the hand only, when each of such stolen objects weighs over fifty *palas*. But if the weight of the stolen thing is less than fifty *palas*, the imposition of a fine, which is eleven times the value of the thing itself, is the proper penalty.

D. V. adds a long commentary: (Kullūka) has said in his commentary on Manu, (while interpreting the former of the above two texts), that "this equating[81] of the present text with the just preceding one (VIII. 320), beginning with the words viz. *dhānyaṁ daśabhaḥ kumbhebhyo* [i.e. (death is the proper penalty for) stealing paddy over ten *kumbhas*], by the use of the word *tathā*[82] (i.e. and), is in consideration of the time and place (of the theft), the stolen article[83] and the caste and qualifications of the owner of that article." The word *dharimam* means 'weighable in a scale or balance'. But Nārāyaṇa Sarvajña has said that "the word *dharimam* means a scale or balance and the things, which are weighed in it and other than gold and silver, i.e. copper and other baser metals (are referred to here). The word '*śatāt*' in the above text means '(over the value of) a hundred *niṣkas*, and a *niṣka* is to be taken as consisting of four units of gold, each consisting of sixteen *māṣas*. But the word *pañcāśatastvabhyadhike* means 'over the value of' fifty copper coins' and the word *śeṣe* means 'less than (the value of) fifty (copper coins)."

Thus the imposition of the fine, ten times the value of the thing stolen, is also to be construed in relation to the *śeṣa*, (i.e. if the value is less than fifty copper coins) and the penalty, in relation to objects, worth more than one hundred units of gold, is the sentence of death (*vadha*) as laid down by Manu and Nārada (*caura*° V. 27) himself has also said (almost in similar words as Manu) :—

"In the cases of (stealing) gold, silver and other precious metals and things, good wearing apparel, and all the gems and jewels, more than one hundred units of gold in value, death (is the proper punishment)." The Kāmadhenu and the Mit. have read *vadhaḥ* in place of *damaḥ* in the above former text of Manu. (The printed edition of Manu has also read likewise). Nārāyaṇa has interpreted *vadha* as meaning 'sentence of death, if the thing stolen belongs to a Brāhmaṇa and mutilation of limbs only, if it belongs to a person, other than a Brāhmaṇa'. Halāyudha has also said that the above

[81] Kulluka reads *viṣamīkaraṇam*, instead of *samīkaraṇam*, read in D. V. and adds *parihaṇīyam* at the end of the sentence, which latter word means 'is to be avoided.'

[82] Kulluka omits the phrase (*tatheti*), containing *tathā*.

[83] Kulluka reads *apahartṛdravya* for apahṛta-dravya, read in D. V.

number viz. 'one hundred' relates to the number of *paṇas* and also to that of the garments (*vāsasāñca*), which are those worn by human beings, both ordinary and silken. But (Vācaspati) Miśra (p. 137 of V.C.) has expressed the following opinion: The stealer of gold and silver, silken and other ordinary garments, valued more than a hundred *paṇas*, is to be put to death[84] and if the above-specified things are valued more than fifty *paṇas* (but less than a hundred *paṇas*) such a thief should have to lose both his hands (or one hand only) while the stealer of those articles, worth less than fifty *paṇas* in value, is to pay eleven times the value only of the article concerned. But Govindarāja, (another commentator of Manu,) has interpreted the word *śatāt*, (occurring in the text of Manu,) as 'more than one hundred gold (coins) and accordingly (the above punishment of death) will be inflicted (on the thief) in case of stealing articles, valued more than one hundred gold (coins)'. This view is questionable. The jewels (*ratnāni*), spoken of in the text of Nārada, means rubies and similar other gems, on the authority of the following text of Manu (VIII. 323b):

"In the case of stealing the most precious gems, the (stealer) deserves the sentence of death."

According to Ratnākara (p. 322), in the following text of Śaṅkhalikhita, viz. 'in case of stealing gold or jewels', written in the context of an earlier text, laying down that 'the punishment is either corporal (*śārīro*) or consists of mutilation of limbs (*anga-cchedo vā*)', the corporal punishment consists in harassment, the mutilation of limbs is that of the ears only and these punishments are to be inflicted in cases of theft, involving fifty (*palas*) only and poverty (of the thief). The same work (i.e. Ratnakāra, *loc. cit.*) has again given the interpretation that "it relates to a person, not fit to be put to death but possessed of sufficient quantity[85] of wealth" of the following text of Viṣṇu (V.8.7), introduced in the context of punishment: "To the stealer of jewels is to be inflicted the fine of the highest amercement.[86]"

If we take this latter interpretation even in the case of stealing good but not the most precious kind of jewels, there is no contradiction with the earlier interpretation, as the punishments, prescribed by Śaṅkha-likhita are concerning (the theft of) bad quality of jewels.

[84] D. V. reads the corresponding text twice (i.e. *pala* (*paṇa* ?) *śatādhika-mūlyaṣyāpahartā vadhyaḥ*).

[85] Ratnākara reads the sentence as '*avadhya-dhana-viṣayam etat*' whiie D. V. reads it as '*tan-madhyama-dhana-viṣayam iti ratnākaraḥ*'.

[86] Ratnākara reads the sentence as' *ratnāpahāry-uttamasāhasam* but D. V. reads it as '*°sāhasaḥ*').

So the final conclusions are the following:

(1) In cases of stealing copper and other baser metals, valued more than one hundred *paṇas* and belonging to a Brāhmaṇa or to the king, the punishment of the thief is either death or mutilation of limbs.

(2) Similar punishment viz. death or mutilation of limbs, for stealing (any quantity of) gold.

(3) In case of stealing the principal jewels, punishment of death and in that of pilfering the inferior jewels, mutilation of limbs.

(4) In case of stealing copper and such other baser metals, valued more than[87] fifty (but less than one hundred) *paṇas*, mutilation of limbs (irrespective of the caste or status of the offended party) but if the value of such stolen metals is less than fifty *paṇas*, the payment of fine only, equal to eleven times its actual price.

(5) In cases of stealing the aforesaid metals valued twenty-five *paṇas* only or things like camphor, only ten times the actual price of those articles are (to be realised from the offender) as fines.

Śaṇkha-likhita have thus laid down the following punishment in cases of *stealing middling things*: The imposition of a fine of one hundred and eight (*paṇas*) (is to be made) in cases of stealing implements of agriculture (*sītā-dravyam*) in proper time (*yathākālam*).

D. V. adds that the word *sītā* means 'land under cultivation' and *sītā-dravyam* implies 'the plough-share, axe (or shovel) etc. The word *yathākālam* indicates 'in times of cultivation'. So if such offence is committed in other times, some extenuation of the above punishment is to be made.

Manu (cf. IX. 293)[88] also says: In cases of stealing weapons, medicinal drugs and implements of agriculture such as the plough-share and the waters (needed for irrigation), the king should inflict (appropriate) punishments.

D. V. adds: 'Of the weapons' (*śastrānām*) means 'of daggers and such other violent weapons', 'of medicinal drugs' (*auṣadhasya*) implies 'of soothing plasters' (*kalyāṇa-ghṛtādeḥ*) and '*kārṣyam phālam*' means 'the ploughshare, used in *Kṛṣi* (i.e. agricultural operations)'. So if in the season of cultivation the plough-share and other implements are stolen, resulting in the non-production of a sufficient quantity of crops due to absence of (adequate) cultivation, then the punishment will be aggravated, otherwise it will be somewhat less than that. Halāyudha is of opinion that the same reasoning (i.e. non-availability, resulting in the defeat of the country by an enemy country) is to be applied to the stealing of the (king's) weapons. The

[87] D. V. reads °*paṇādikeṣu* for °*paṇādhikeṣu*.

[88] Manu reads the third and fourth feet differently. D. V. unnecessarily and meaninglessly thrusts *māṣo* between *kārṣyaphālo* and *dakanāñca*.

restitution of the thing stolen is to be insisted upon in all the above cases, as emphasized earlier.

D. V., after having quoted again Manu (VIII. 330 and 331) along with comments on the word *niranvaye* by the Ratnākara (p. 323) and the Kalpataru, adds the following comments on some other words of those texts:

According to (Vācaspati) Misra, (V.C. p. 138), the word *puṣpam* means '*kusumādi*[88a] i.e. flowers and similar other things (connected with a tree). The word *naga* means 'a tree' here and according to Halāyudha, the word *niranvaye* means 'left without any guard.' The word *haraṇe* (i.e. in the case of stealing) is to be supplied after both the words (viz. *niranvaye* and *sānvaye*). As fruits and esculent roots have been included by us and also by Ratnākara (p. 323), in a following text of Vyāsa in the next topic of the stealing of trivial things, and vegetables also, both in view of their trividlity and inclusion in the latter (VIII. 331) of the above texts of Manu, naturally fall within that category, the Ratnākara having included them in section of middling things, but their theft has been made punishable a bit severely by this text (of Manu), so to resolve this contradiction it appears advisable to restrict the meaning of the of the 'vegetables, fruits and esculent roots', spoken of in Manu's text as 'those, belonging to the king or to Brāhmaṇas, or meant for the worship of gods or for the performance of sacrifices or difficult to be procured (in that particular time or place)'. But Nārāyaṇa has explained the phrase 'vegetables, esculent roots and fruits' (*śākamūla-phaleṣu*) as 'costly ones, providing a person with his daily food by their sale.'

Śaṅkha-likhita have laid down: Forty *paṇas* are to be imposed as fine on the stealer of a single wheel of a chariot and one hundred eighty on that of a wooden bed.

ON THE TOPIC OF STEALING TRIVIAL THINGS

Vyāsa has laid down: The stealer of the middling type of trivial things (*madhya-hīna-dravya-hārī*) and of flowers, fruits and esculent roots shall have to pay (as fine) twice the value of the things sotlen or five *kṛṣṇalas*.

D. V. adds: The *madhya-hīna-dravya-s* include boiled rice and similar other things and the term *kṛṣṇala* is to be understood as a coin of the weight of three barley grains, which will have to be made of gold, according to the *paribhāṣā* (section on technical terms), given above.

Gautama (II. 3.15) says: Other authorities (*anye*) have laid down the punishment by the imposition of a fine of five *kṛṣṇalas* in the taking (i.e. stealing) of fruits and green vegetables.

[88a] But V. C. reads *kusumbhādau*,

D.V. adds: These two later additional quotations, regarding fruits and vegetables, have been made (by us) and these do not thereby offer any contradiction (to our previous quotations on the same). Owing to the insertion of the word *anye* (i.e. other authorities), an option may be said to have been implied (between the purports of the previous and present citations). It seems that the option may be exercised in consideration of the first or the repeated commission (of the above offence) and the presence or absence of mutual affection between the parties (i.e. the owner of the articles and the appropriator), authorising such taking (without the former's permission).

Manu (VIII. 326-9 and 333) has laid down: The stealers of the following articles are to pay the fines, amounting to twice their respective values:

Thread, cotton, the basic seeds of alcohol, cow-dung, raw sugar, curds, milk, whey, drinking beverage, grass, reeds, pots, made of those reeds, salt, earthen pots, earth, ashes, fish and birds, oil and clarified butter, meat and honey and any other thing, gathered from animals and all other similar articles, such as various kinds of liquor and eatables and boiled rice. But the king should punish with (*taṁ śatam*) a fine of one hundred (copper coins) the person, who steals other things belonging to the last items (i.e. eatables and boiled rice), spread out for being served to persons and also that person, who steals the fire from a house.

D. V. adds: The pot, made of reeds (*vaiṇava bhāṇḍa*), is a receptable of water, made of thick reeds. But Nārāyaṇa Sarvajña, having read *vaidala* for *vaiṇava* and connected *bhāṇḍas* (i.e. pots) with both *veṇu* (reeds) and *vidala*, has explained *vaidala bhāṇḍas* as 'pots, made of wood, cut into small pieces.' The phrase *anyat paśusambhavam* (i.e. any other thing, gathered from animals) means 'hide, teeth and similar other things.' But Nārāyaṇa has explained the phrase as *rocanā* (i.e. a kind of yellow pigment) etc. *Anyeṣām evam ādīnām* [i.e. other things, belonging to the last item (of eatables)] means 'i.e. cakes, prepared and spread on the dining plates'. The phrase *taṁ śatam* has been read both by Kullūka and Nārāyaṇa Sarvajña as *tam ādyam* (i.e. the punishment of the first on him) and explained as 'the punishment of the first amercement'. According to the Ratnākara (p. 324), the fire, (spoken of in the last portion of the above group of verses,) is 'ordinary domestic fire', on the authority of the following text viz. 'An ordinary fire is to be meant in a *viṣaya*', which last word is to be explained as *samśaya* [i.e. (in cases of) doubt]. Govindarāja has also said that the above punishment applies to a person, who steals even the ordinary domestic fire. But Kullūka says that this is unjust and that the king should impose the fine of the first amercement only on the person, who steals from another person's fire-house the *tretā*

or the *gṛhya* fire, in consideration[89] of the rite of the 'placing of fire' [(*agnyā-*) *dhāna*], being performed by the owner of the fire. Nārāyaṇa is also of the same opinion.

Viṣṇu (V. 83-84) also says: The pilferer of the following things is to be fined by twice (*dvi-guṇam*) the value of the article involved:

Threads, cotton, cow-dung, curds, milk, whey, raw sugar, grass, salt, earth, ashes, fish and birds, oil and clarified butter, meat and honey, small pieces of wood, made into a pot, reeds, earthen and iron-made vessels and boiled rice.

D. V. adds that Halāyudha has read *tri-guṇam* (i.e. thrice) instead of *dvi-guṇam* (i.e. twice).

Śaṇkha-likhita have also said: In cases of (stealing) manufactured wood (i.e. wooden things) and pots, made of stone, earth (produced by potters), leather, cane and of *vidala* (i.e. small pieces of wood, joined together), the fine is five times or three times of the *kārṣāpaṇas*, fixed respectively as prices of the articles.

Nārada (caura⁰ VV.22-24) has laid down: In cases of stealing wooden pots, grass and similar other things, earth-made vessels, reeds and pots, made of reeds, nerves, bones and hides (of animals), vegetables, *ārdra* (ginger), radishes, fruits and esculent roots, cow's milk, sugarcane-juice, salt, oil, boiled rice, rice prepared to be served, wines and eatables (*odanasya ca*) and all other things of very insignificant values, the punishment (in the form of fines) shall be five times the prices of the respective articles.

D. V. adds: The Kāmadhenu has read *āmiṣasya* (i.e. of fish and flesh of animals) for *odanasya*. But the Mit., having read *auṣadhasya* (i.e. of medicine) for the latter word, has remarked that *odana* (i.e. eatables) has already been included in the above text within *pakvānna* (i.e. boiled rice). So it appears that the fines of twice the values of honey and similar other things, as prescribed by Manu and those of five times the values of cow's milk and similar other things, as laid down by Nārada, are to be reconciled by apportioning them to small or very small quantities of curds etc.

Manu (VIII. 319) further says: He, who steals the rope (*rajjuṁ*) or the water-pot (*ghaṭaṁ*) from a well or breaks the well itself, shall not only be compelled to pay the fine of a *māṣa* but also be forced to restore (*samāharet*) the stolen articles (*tac-ca*).

D. V. adds: Kullūka Bhaṭṭa has interpreted the word *kūpāt* (i.e. from a well) as '*kūpa-samīpāt*' (i.e. from the vicinity of a well) and has further said that the words, '*rajjuṁ ghaṭaṁ*' mean 'either the rope or the

[89] Kulluka reads *ādhānapekṣayā* (i.e. in consideration of the rite of *ādhāna*) but D. V. reads *ādhānopakṣayam* (i.e. loss of *ādhāna*), which is meaningless here.

water-pots' Ratnākara (p. 326) is of opinion that the theft, referred to here, is concerning a single piece of rope and one water-pot only. But the Kāmadhenu has read the two words '*rajjuṁ*' and '*ghaṭaṁ*, placed one after another in the beginning of the above text, as a single word viz. '*vajra-ghaṭaṁ*', on the reasoning of the word *tat* (meaning *that*), which is in the singular number with *ca* (meaning *and*), having been used at the end of the text. The *nibandha* Halāyudha is also of the same opinion. But the Pārijāta, though reading almost similarly the above text of Manu, (quoted by us), has suggested a *samāhāra-dvanda* compound in the word *rajju-ghaṭaṁ* (as read by him for '*rajjuṁ ghaṭaṁ*). The word *samāharet* in the above text means, according to D.V., *tyajet* (i.e. leave there).

Śaṅkha-likhita have laid down: A non-Brāhmaṇa, accused either of stealing the following things, belonging to a Brāhmaṇa, forcibly or of taking them unknowingly, shall be awarded be punishment of the mutilation of his hand (or hands):

Sacrificial wood, sacrificial ghee, sacrificial fire, ordinary wood, grass, stones, flowers, fruits, esculent roots and similar other things. But if a Brāhmaṇa openly steals the kuśa grass, the water-carrying vessel and the requisites of an *agnīhotra* sacrifice, he shall have to suffer mutilation of limb but if he is ascertained by circumstances to have done the above sin (of theft) (*kilviṣī*), he shall be made to mount on an ass but members of other castes, doing so, shall have their heads shaved and sprinkled with urine, over and above the punishment of mounting on an ass.

D. V. adds: The 'Brāhmaṇa', mentioned (in the beginning of the text), means 'one, engaged in the performance of sacrifices and similar holy actions' (cf. Ratnākara, p. 327). The 'sacrificial wood' etc., spoken of, implies 'those, which have been procured (by the Brāhmaṇa) to perform the sacrifices'. The 'requisites of an *agnihotra* sacrifice' are 'those, which are to be offered to fire for the performance of *homa*'. The word *kilviṣī* means 'a thief', according to the context. 'Of other castes' means 'of Kṣatriyas and other inferior castes'. (cf. Ratnākara, pp. 327-8).

On the topic of theft Gautama (II. 3.43) says: No corporal punishment is to be inflicted on a Brāhmaṇa. So as an answer to the question, what will the proper punishment be for a (guilty) Brāhmana, the same authority (II. 3.44-45) has laid down: Causing cessation of his usual holy duties, proclamation of his guilt, banishment and imprinting his person (with characteristic marks) and performance of penances, if he fails to eke out his living by any other means (than stealing) (*avṛttau*).

D. V. adds: 'Launching into new religious duty' is meant by the first of the above penal measures, viz. 'causing cessation of his usual holy

duties'. But Halāyudha has said that the penal measure is 'avoidance of other men's contact with him and similar other physical actions'. 'Proclamation' consists in the publicization of his thievish character by beat of drums, after having made him mount on an ass. 'Banishment' is 'turning him out of his own country'. 'Imprinting on his person' should be made 'on his forehead and other exposed parts of his body of the marks of a thief'. The Ratnākara (p. 328) has said that the above-mentioned punishments are concerning the Brāhmaṇa, not engaged in (holy) sacrifices[90] (i.e. not a pious Brāhmaṇa) and are thus not in conflict with the previously quoted text of Śaṅkha-likhita. The same authority (i.e. Ratnākara, p. 328) has also quoted the following different opinion of Lakṣmīdhara: This latter author has read in the above-quoted text of Śaṅkhalikhita '*Brāhmaṇo brāhmaṇasya*' instead of '*Abrāhmaṇo brāhmaṇasya*' and has accordingly given his opinion in the following words:

If a Brāhmaṇa steals sacrifical wood etc., belonging to another Brāhmaṇa, then only the stealer Brāhmaṇa shall have his hand (or hands) mutilated but a Brāhmaṇa, doing so in respect of a non-Brāhmaṇa, shall not have to undergo any kind of corporal punishment. This is the real interpretation of the above text (of Śaṅkhalikhita).

But the Kāmadhenu has, however, read the above text with the negative particle *a*, added to the first word, i.e. Brāhmaṇa. The word *avṛttau* means 'in case he fails to earn his livelihood by any means other than stealing.'

Āpastamba (II. 28.10-12) has laid down: If a person, who is not learned, appropriates the sacrificial wood, (sacrificial) water, esculent roots, fruits flowers and incense, a morsel of food and vegetables, belonging to others, he is to be admonished (*vācā bādhyo*) but a learned man, doing so, shall be punished by the taking away of his wearing apparel only, even if he has done so intentionally (*kāmakṛte*) and if even he has appropriated the eatables (included in the above list), when his life was in danger (due to starvation).

D. V. adds the following note on the above text: The phrase *vācā bādhyo* means 'should be admonished', as Manu's dictum (VIII. 341), previously cited by us on pp. 40 and 41 exempts a travelling Brāhmaṇa (or a member of the three upper castes) only from punishment in cases of his taking two radishes and a handful of peas on the depletion of his resources and esculent roots and morsels of food of the present list are other than those, exampted by Manu or emphasize the owner's implied prohibition to take these things. The word *kāmakṛte* means *kāmakṛte 'pi* (i.e. *even if* done intentionally). The import of the present text of Āpastamba is the same as that of the text of

[90] D. V. reads that Ratnākara has read *etāni ayāgādipara-brāhmaṇa-viṣayāṇi* but Ratnākara reads *etāni ca yāgādipara-brāhmaṇa.*

Manu (XI. 16), beginning with the words *tathaiva saptame bhakte* (i.e. at the time of the person's partaking of his seventh meal, i.e. of the first meal after his previous three-days' starvation), already cited by us in the sub-chapter on 'exemptions from punishments' (p. 41). Though the present Āpastamba text has not been quoted by Ratnākara, yet we have put it down here from its quotation by the Kāmadhenu and Halāyudha's digest. It also appears that the import of the just cited (last portion of the) text of Gautama, beginning with the word *avṛttau* (in the absence of means of livelihood), is identical with that of the present Āpastamba text. Moreover, the fact of the insertion by Manu of the text (VIII. 341), containing the number 'two' (in the phrases viz. *dvāvikṣū dve ca mūlake*), in the topic of the theft of trivial articles, may also be taken as intending the same thing.

The following view is, therefore, wrong: As the usual means of livelihood (*vṛtti*) (of a Brāhmaṇa) is officiating in other persons' sacrifices and following similar other avocations, positively prescribed for him, the word *avṛttau* (in the above text of Gautama) means 'when a Brāhmaṇa is not able to make both ends meet (by following those means of livelihood), he may then even take recourse to stealing', for the following three reasons, viz (1) the above interpretation suffers from cumbrousness, (2) it is in direct conflict with the injunction, prohibiting thefts generally and (3) it also militates against the texts, prescribing specific punishments for specific thefts. Thus, even according to the interpretation of Ratnākara (p. 328), the word *jīvana* (occurring in the following clause of that interpretation viz. *anyena prakāreṇa jīvanānupapattau*) means '(sustenance of) life at that particular period', which view corroborates the above text of Āpastamba and does never indicate 'means of livelihood (*jīvikā*) only', as is evident from the blemishes of this latter interpretation, enumerated above.

In continuation of punishments, Viṣṇu (V. 88) says: The pecuniary punishment (i.e. fine) for stealing an article, not specified (in texts), is equal to the price of the article concerned.

D. V. adds: As this text has been quoted in the Ratnākara (p. 326) and in the Kāmadhenu in the topic of the theft of trivial things, where two times or five times of the actual prices of the articles stolen have been prescribed as punishments, as are justifiable, so it seems that this text relates to the stealth of things, more trivial (than those, specifically mentioned in the other texts) or it may be construed as "concerning unauthorised thefts, (committed by the thieves) out of their affectionate relationship (with the owners of the things so stolen)."

Here ends the third chapter, viz. on theft, of the Daṇḍaviveka, composed by Mahāmahopādhyāya Śrī Vardhamāna, the dharmādhikaraṇika (i.e. judge).

Chapter IV

PUNISHMENT FOR MOLESTATION OF OTHER MEN'S WIVES (*paradārābhimarṣaṇa*)

The word *paradāra* (of the above compound word) means 'any woman, other than one's own wife', who is of two kinds, viz. married and unmarried. Of these two, the married type also may be of various kinds, viz. chaste and unchaste, belonging to superior and inferior castes, relation and stranger, kept in seclusion and not so kept, wife of impotent and similar other persons and any other woman. The unmarried type again admits of a three-fold division, viz. unmarried daughter (of any person), an outcaste woman and a prostitute. That these divisions of several kinds of women, like the employment of force, fraud, mutual love and similar other factors, effect the application of different kinds of punishment has been shown by us in the first chapter, while dealing with technical terms. The molestation (*abhimarṣaṇa*) of these several kinds of women is also of two kinds, viz. kidnapping (them) (*saṅgrahaṇa*) and (performance of) sexual intercourse (with them). This *saṅgrahaṇa* is nothing but *samīcīnaṁ grahaṇam* (i.e. taking intimately), which consists in forging intimacy with another man's wife.

Bṛhaspati (XXIV. I) has thus subdivided this *saṅgrahaṇa*: Rudeness (i.e. *pāruṣya*) has been spoken of as consisting of two kinds, *sāhasa* (a rash act or high crime) contains two characteristics and *saṅgrahaṇa* (kidnapping of women) which originates from vice, is to be known as of three varieties.

The same author (XXIV. 2a) has then described those varieties in the following words: Two varieties are those, which are effected by force and fraud respectively and the third variety has its origin in mutual love.

D. V. adds that these three varieties are also to be found in the performance of sexual intercourse (with another man's wife), which is also preceded by the above three conditions.

The same authority (XXIV. 2b) again makes a different division of the above three kinds of kidnapping in the following manner. That offence (of *saṅgrahaṇa* or kidnapping another man's wife etc.) is also said to be of three classes, viz. the first, the middle and the highest.

He (XXIV. 3-5) then thus describes these three classes: *Balātkāra* (or forcible abduction) is what is committed with a woman, who is either unwilling, or is in a sleeping, drunken or mad condition or talking incoherently within herself. *Upādhi-kṛta* (or fraudulent abduction) is what is accomplished either by bringing a woman to one's own house by deceitful means or by

offering her wine or other intoxicating drinks. *Anurāga-ja* (or abduction of a woman, consequent to the mutual love of the parties) is what is effected either by mutual love, generated by exchange of glances, or after having sent a female intermediary or out of greed either for the personal beauty (of the woman) or for the money (belonging to her).

The Matsyapurāṇa says: A man or a woman, who seduces a woman (*sañcārakaḥ*) or who assigns her a secret place (for her meeting with her paramour) (*avakāśadaḥ*), is to be punished as the person, who indulges in committing sexual intercourse with another man's wife (*pāradārikaḥ*).

D. V. adds: Halāyudha has interpreted the word *sañcāraka* as 'one conducts a male or a female to a place, fit for his or her (secret) meeting with the concubine or paramour, for that specific purpose.'

Manu (IX. 225, 1st and 4th feet only) has laid down: (The king) should forthwith banish from the city (or the territory) the gamblers, the cheats, the seducers of other men and other men's wives (*kerān*).

D. V. adds: According to Ratnākara (p. 313), the word *kerāḥ* (in *kerān*) means 'those, who make secret signs to and thus seduce other men and other men's wives'. Halāyudha is also of the same opinion. The division into the first etc., referred to above, has been described in detail by Vyāsa and other authorities but we have not quoted all those descriptions for fear of swelling the bulk of this treatise but are going to include here some hints of the same for the purpose of applying punishments (on those several types of seducers).

Bṛhaspati (XXIV. 6b and c) thus says on this topic: Sidelong glances, smile, sending a female emissary and touching the ornaments and garments (of a woman) constitute the *first kind* of *saṁgraha* (i.e. *saṁgrahaṇa*, or seduction).

D. V. adds that the forbearance of a male person, touched by another man's wife, is also to be taken into consideration here like the former's own touching (the woman), on the authority of the following text of Manu (VIII. 358): The acts of (a man's) touching a woman in a prohibited part of her body and tolerating the touch, made by her (on the man), are known to be *saṁgrahaṇa*, approved of by both of them.

Vyāsa says: The *middle kind* of *sāhasa* (here *saṁgrahaṇa*) consists in sending perfumery and garlands, betelnuts, ornaments and clothes (to a woman) and in enticing her with food and drink.

Bṛhaspati (XXIV. 8) further says: Persons, adept in the sacred lore, have characterised the following actions as constituting the *highest saṁgrahaṇa*:

Sitting together (with a woman) on the same seat and sleeping (with her) on the same bed, sporting together, kissing and embracing (her).

D. V. adds that similar other acts are to be understood or looked for in original works.

Bṛhaspati (XXIV. 11) has thus laid down the following punishments (for the above three classes of offences): The fines of the first, middle and highest amercements should be respectively imposed on the above three classes (of criminals) but higher amounts of fines are to be levied from richer offenders.

Āpastamba (II. 26.18-19) has laid down: A well-dressed young man, who approaches another man's wife without any evil motive, should be admonished only but if he does so intentionally (i.e. with an evil motive), he is to be punished.

But Manu (VIII. 360-361) says: Beggars, ballad-singers (*vandinaḥ*), persons, who have just got themselves initiated into holy sacrifices (*dīksitāḥ*) and (paid) artisans (*kāravaḥ*) may converse with house-wives unrestricted. But one, prohibited from talking with other men's wives, should never do so and if found doing so, shall be fined a gold coin.

D. V. adds: According to Ratnākara (p. 385), the word *vandinaḥ* means 'ballad-singers (in praise of some person)', the word *dīkṣitaḥ* implies 'persons, just initiated into holy sacrifices' and the word *kāravaḥ* indicates 'paid artisans.' But the commentary on Manu (by Kullūka) explains the last term as 'cooks and similar other persons.'

Yāj. (II. 285) has prescribed the following special rule regarding the punishment to be inflicted on a guilty woman, in this connection:

In case of positive prohibition (by her male relations, such as husband, son etc.) the woman found (guilty of conversing with an unconnected man) shall be fined a hundred (copper coins) and the man, so involved, two hundred (copper coins). These punishments, according to the respective castes of the parties, of both the man and the woman, are to be meted out to them in cases of prohibition just like those of seduction (including actual sexual intercourse) when they do so together.

D. V. adds that it seems that (punishments, prescribed in) the previously quoted texts of Manu are concerning the repeated commission of the offence of seduction or relating to richer offenders, while the present text of Yāj. has laid down the punishments in cases of the first commission or of poorer offenders.

Kātyāyana has, however, laid down the following exception to the above general rules (laid down by Manu and Yāj.):

"Those, who are adept (in the determination of the criminality of such

men and women) have stamped as 'vicious seduction' the connection of an (unconnected) male person with a married female in her (husband's) home (*paragṛhe*) but not so, when the woman herself has come to that man's house." "So *grahaṇa* (i.e. *saṁgrahaṇa* or seduction) may be committed by any other means, due to evil motive but never in the case of the woman herself coming to the house of the man, who is not to be considered guilty."

D. V. adds: The word *paragṛhe* means 'the man having gone to the woman's house', where the man is to be considered guilty but if the woman comes to the man's house of her own accord, the man is to held absolutely not guilty. The latter text has been read in the Kalpataru in the topic of *saṁgrahaṇa* (i.e. seduction) but has been introduced in the Ratnākara (p. 385) in the topic in continuation of *abhigama* (i.e. sexual intereourse), having prefaced it with the name of Kātyāyana.[91]

Nārada (cf. *stripuṁsa*° V. 61) and Kātyāyana[92] have said: A person, approaching the (somewhat) free and consenting (*secchān*)[93] wives of persons, who have abandoned their husbands because of their very bad character[94] and of the impotent and similar other powerless persons, shall not be held guilty of any high crime (*sāhasa*).

D. V. remarks : The Kalpataru has added the following explanatory note to the above text : A male person, willingly approaching the wicked wife of a man, who has forsaken her for her wickedness and also the wives of impotent and other powerless persons, shall not be held guilty.

Manu (VIII. 362) has laid down: This general rule (laid down in the just preceding verse of the same author, quoted above) does not apply to the wives[95] of the actors and similar other clases of persons, living upon the income of their dependents (including wives), as these men connect their own wives with other men and secretly employ them in sexual intercourse with them.

D. V. adds the following note: The word *ātmopajīvinaḥ* (i.e. persons, living upon the income of their dependents) means "those, who live upon the presentation of themselves, attired in dresses' (*veśopajīvinaḥ*) and employ and exploit their wives as their substitutes on the authority of the maxim

[91] But Ratnākara has prefaced this quotation with the name of Viṣṇu.

[92] The following quotation has also been prefaced by the above work (p. 385) as of Viṣṇu.

[93] D. V. reads *secchān* but Ratnākara (*loe. cit*) reads *svecchān.*

[94] D. V. reads *praduṣṭa*° but *Ratnākara* (*loe. cit.*) reads it as *aduṣṭa*, which is meaningless here.

[95] D. V. wrongly reads *cāraṇadoṣeṣu* for *cāraṇadāreṣu*, correctly read in Manu and Ratnākara (p. 386)

'A wife and a son are one's own selves'." But Nārāyana has explained the above word as 'relating to prostitutes' (who live upon the prostitution of their own bodies). There is no prohibition of and consequent punishment for conversing with them. If anybody carries on conversation with such women in seclusion, then a nominal punishment will be imposed on him, as laid down by Manu (VIII. 363):

A person, holding conversation with maid-servants, women, kept as permanent concubines of single persons and wandering nuns (*pravrajitāsu*) will have to pay a nominal fine (*kiñcit eva tu*)[95a] (as punishment):

D. V. adds: The word *pravrajitāsu* means 'women of the Buddhist and other heretic folds, practising vows.[96] The word *kiñcit* has been explained by Nārāyaṇa as 'according to (the offender's) capacity' but according to Ratnākara (p. 387), it means " 'less in value than a gold coin', as shown by Manu himself." So it is apparent that the punishment to be inflicted in such cases of conversation with actors' wives and similar other women should necessarily be less than that, fit to be prescribed for the offence of enticing them, as the former offence relates to conversation only and the latter to enticement, and Bṛhaspati has generally laid down the punishment, amounting to the first amercement, for the latter class of offences. This punishment should necessarily be inflicted in a more lenient form, when the offence (of enticement) is committed in respect of wives of actors and similar other classes of persons, as the fine of a gold coin, as prescribed by Manu (VIII. 361), is rather too exorbitant and consideration must also be had of the prevalence of the practice of enticing women among very rich men.

Śaṅkhalikhita have said: The duties (*dharma*), incumbent on everybody, are attachment to his own wife only and performance of his own work. The very limb of the body, with which a person commits an offence, is to be cut off or he should be fined one thousand and eight (*paṇas*). These punishments are to be meted out on offenders, other than a Brāhmaṇa, who is unpunishable.

D. V. adds: According to the Ratnākara (p. 387), 'by the limb' (*aṅgena*) means 'by means of hands and other limbs' and this punishment of mutilation of limbs is applicable to all offenders excepting *Brāhmaṇas*, as the phrase *anyatraivaṁ brāhmaṇāt* (meaning 'excepting Brāhmaṇas') is to be construed with *sarveṣām* (i.e. of all persons). This prescription is to be followed (in

[95a] D. V. omits '*tu*'.

[96] D. V. reads *bauddhadi-vrata-cariṇīṣu*, while both Ratnākara (p. 387 in the body of the text) and Kulluka read *bauddhmdi-brahma-cāriṇīṣu* and *bauddhādi-brahma-cāriṇībhiś ca* respectively, though *Ratnākara* records in the corresponding footnote on the same page a variant, viz.° *vrata*°.

cases of molesting other men's wives) even though there is a complete absence of wickedness of motive (i.e. the evil act has unintentionally been committed) on the corroborating authority of the text of Nārada, viz. 'also conversing with another man's wife' and is rather a more lenient form of punishment than the sentence of death, as it amounts to mutilation of a limb only of the offender.

Manu (VIII. 352-3) says: The king should imprint with tormenting punishments the bodies of those (*tān*)[97], engaged in molesting other men's wives and then banish them out of the territory. Miscegenation among the people[98] arises out of that offence, resulting in the rise of injustice,[99] cutting at the roots (of civilised society) and conducing to wholesale destruction.

D. V. adds that (Vācaspati) Miśra (V.C. p. 171), having read the phrase (*pravṛttāṁs*)-*tān* as (*pravṛttāṁs*)-*trīn*, explained it as the three (lower) castes other than Brāhmaṇas.

The same author (i.e. Manu, VIII. 359) further says: A non-Brahmana, convicted of enticement (of a woman), deserves the punishment[100] of death, as wives of all the four *varṇas*[101] are known to be[101a] the things, fittest for preservation.

D. V. adds a long note on the above three texts of Manu: 'Imprinting with (tormenting) punishments' means 'doing so by cutting off the nose, lips and similar other (minor) parts of the body', according to Kullūka Bhaṭṭa in his commentary on Manu. But Nārāyaṇa (another commentator of Manu) has explained the above phrase as '(by mutilating) the private parts (of the offending male person)'. According to Ratnākara (p. 387), the underlying principle (of punishments in these cases) is imprinting with the specific figures of what are justified in the individual cases in the several types of death-sentence and the word *abrāhamaṇa* (i.e. non-Brāhmaṇa) should be understood as 'a member of a caste, other than that of a Brāhmaṇa, (doing so) in relation to a member of a higher caste'. Thus it is apparent that though the above two statements (laid down in the three texts of Manu) really belong to the topic of (prohibited) sexual intercourse (with other men's wives) owing to the occurrence of the word *svadāra-niyama* (i.e. attachment to one's

[97] But both Manu and Ratnākara (p, 387) read *nṛṛn* for *tān*.

[98] D. V. misreads *no kasya* for *lokasya*.

[99] D. V. misreads (*mūlaharo*) *dharma* for (*mūlaharo*) *S dhatma*.

[100] Both Manu and Ratnākara (p. 387) read *daṇḍam* but D. V. reads *vadham*, which amounts to tautology here, as it is preceded by the word *prāṇāntam* (i.e. extinction of life).

[101] D. V. reads '*caitaiṣām*' (i.e. of these) for *varṇānām*. read by Manu and Ratnākara (p. 387).

[101a] Both D. V. and Ratnakara (p. 387) read *smṛtāḥ* but Manu reads *sadā* (meaning 'always').

own wife only) (in the previously quoted text of Saṅkhalikhita) and also due to the insertion of the phrase *para-dārābhimarṣe tu* (i.e. but in the cases of molestation of other men's wives) (in the beginning of the first text of Manu), laying down in general terms (the punishment in such cases) and the subsequent addition (in the beginning of the second text) of the cause (of the infliction of such punishment) viz. *tat-samuttho hi* (i.e. arising out of that offence), thus clearly indicating by both these phrases and by the interpretation of (Nārāyaṇa) Sarvajña, laying down a drastic punishment, and consequently enticement of and performance of sexual intercourse with other men's wives and not simply holding conversation with them are implied, yet, owing to the dictum of Āpastamba viz. the cutting off of the male organ with the testicles (*pūrvasannipāte śiśnasya chedanaṁ sa-vṛṣaṇasya*) (is the appropriate punishment of such offenders) and also due to the fact that the word *aṅga* (i.e. limb) may also mean the male organ also, the repetition of the word *yena* (i.e. with which) (in the phrase viz. *yena yena aṅgena*, occurring in the text of Śaṅkhalikhita) becomes thereby useless and contradictory to the explanation of the word *aṅgena* (i.e. with the limb) as *hastādineti* (i.e. with the hand and similar other limbs), offered by Ratnākara (p. 387). Moreover, the word *saṁgrahaṇa* (i.e. enticement) has been actually used in the last text (of Manu) and the prescription of the infliction of a heavy punishment has been made just after that word. As the concluding words viz. 'wives are the fittest things, worthy of preservation' (*dārā rakṣyatamāḥ*) have been added simply to stop the repetition of the offence and as both the above statements (of Manu, expressed in three texts) have been cited in all the previous digests in the topic of *saṁgraha* (i.e. enticement of women), so it is absolutely certain that the above texts relate to that very offence. But as the various punishments, viz. mutilation of hands and similar other limbs, infliction of the fine of one thousand and eight (*paṇas*), exile and sentence of death, being mutually dissimilar, cannot be reconciled only in consideration of the higher caste of the enticed woman (than that of the enticing man), the following simplified rules are laid down here:

(1) A Brāhmaṇa, committing a serious enticement and also repeatedly, should be banished after having imprinted characteristic marks on his person but in all other cases, should have to pay the fine of one thousand and eight (*paṇas*) only.

(2) A non-Brāhmaṇa, accused of doing so in relation to a woman of a higher caste or not so and also repeatedly, should be put to death. In all other cases, a rich non-Brāhmaṇa should be fined one thousand and eight (*paṇas*), while a poor such should have his hand (or hands) mutilated.

Kullūka Bhaṭṭa has interpreted the term *a-brāhmaṇa* (i.e. non-Brāhmaṇa) as a Śūdra, by reason of the prescription of a heavy punishment. The Kalpataru has suggested the supply of the word *Brāhmaṇyāḥ* (of the wife of a Brāhmaṇa) after the phrase viz. *abrāhmaṇaḥ saṁgrahaṇe* in the last of the above texts of Manu.

PUNISHMENT FOR PROHIBITED SEXUAL AND CARNAL INTERCOURSE (WITH WOMEN AND MEN)

Prohibited sexual and carnal intercourses constitute two kinds of such connection and also on the authority of the prohibition, laid down in the Viṣṇupurāṇa, in the following phrase viz. in the sex-organs of women, other than one's own wife and in organs other than sexual.

Manu (VIII. 373) says on this topic: For cohabiting with an outcaste (*Vrātyayā saha*) or a Cāṇḍāla woman for a full year '*samvatsarābhiśastasya*', the punishment of the criminal shall be double of that, which has been laid down in such cases of solitary connection.

D. V. adds: According to Ratuākara (p. 393) the principle, underlying the above (enhanced) punishment, is consideration of the time involved (1 year). But the Kalpataru has explained the above in the following manner: That wicked person (*duṣṭasya*), who has already acquired the infamy of having cohabited with another man's wife for a year (*samvatsarābhiśastasya*), shall be punished with double the penalty, laid down in such year-long cohabitation (with another man's wife), when he again commits that offence. The word *duṣṭasya* implies "not merely stigmatised with such infamy but also habitually a guilty person."

(Kullūka) in his commentary on Manu, however, says: If a person, already convicted of and punished for the offence of cohabiting with another man's wife, repeats that offence with that very woman after the lapse of a year only, he is then to be awarded a punishment, double (in amount or severity) of the previous punishment.

According to Ratnākara (p. 393), a *vrātya* woman is one, who has deviated from the path of morals and religious practices, as Hārītā has defined the term *vrātyā* as 'a woman, not performing the usual duties and not following the religious practices'.

Lakṣmīdhara [the author of the (Kṛtya-) Kalpataru] has also said that a *vrātya* woman is 'one of very evil conduct and includes women, making their living out of slaying and capturing (animals?)'. But Halāyudha has explained the term 'as an unmarried girl, who has passed the normal age of marriage'. Nārāyana has also expressed the same view in his commentary on Manu. But Kullūka Bhaṭṭa has explained it as 'one, born in the *vratya* caste' and added the following remarks:

If a person, accused of and consequently punished[102] for cohabiting with either a *vrātya* woman or a Cāṇḍāla woman, repeats those offences after the lapse of a year only, then the punishment, prescribed by Manu in the text (VIII.385b) viz. "(A fine of) a thousand (*paṇas*) (is to be inflicted on a person, cohabiting with) a woman of the untouchable class", should be doubled and Manu has here offered two examples only of such cohabitation simply to extend the application of the punishment for approaching a Cāṇḍāla woman on a person, convicted of doing so in respect of a *vrātya* woman also.

But Nārāyaṇa has given a completely different interpretation (of the above text of Manu): The punishment to be inflicted on an offender, who has already been penalised for cohabiting with another man's wife and who commits a similar offence once only in respect of a menstruating girl, not yet got married, even though she has attained her marriageable age, should be double of what is usually awarded to similar offenders and not otherwise.

But the import of the Kalpataru is to the following effect: If a person, who is inherently wicked and has already been punished for illegally enjoying another man's wife for a year, cohabits once only either with a *Vrātya* or a Cāṇḍāla woman, he is to get double the punishment, already inflicted upon him for a year-long cohabitation with another man's wife.

Manu (VIII.379) further says: The shaving of the head only of the Brahmana, (accused of the above offence), is the substitute for sentence of death, which should, however, be carried out literally for offenders, belonging to other castes.

The Matsyapurāṇa also says: The man, who forcibly (*balāt*) pollutes another man's wife (by ravishing her), is to be sentenced to death (*vadha-daṇḍo*), while that another man's wife is not at all to be held guilty. But one, taking (*saṁgṛhṇan*) 'a deccased man's poor (*adravyāṁ*) wife, also incurs no crime, while if that widow is possessed of means to feed herself (*sānnām*), the man, taking her, deserves forfeiture of his entire property (*sānnāṁ parigṛhāṇastu sarvasvam daṇḍam arhati*).

D. V. adds: The Kāmadhenu has read the last line of the above quotation (of four lines) as' *sa-draṁyāṁ tāṁ gṛhāṇastu daṇḍam uttamam arhati*', which means 'in case of taking such a widow possessed of riches, (as one's wife), the man is liable to be fined the highest amercement (or punished with the infliction of the highest penalty, i.e. with death). The sentence of death (*vadha-daṇḍaḥ*) is simply illustrative and means the punishments, appropriate

[102] D. V. reads *adaṇḍitasya* here for *daṇḍitasya*, which very word, though not found in the above-quoted comment of Kullūka, is the correct one here according to the context.

for specific cases. It, therefore, appears that the taking of a willing, poor widow is applicable to cases of such act, done by a Śūdra and similar other lower caste men, as is evident from the use of the word *saṁgṛhṇan*, to be sharply differentiated from another word *balāt*, used just before and meaning 'by taking recourse to fraudulent practices'. The import of the adjective *adravyām* (i.e. having no wherewithal to maintain herself) is that a man, taking her with the allurement of providing her with food, raiment and similar other necessaries of life, is not to be held guilty.

Vyāsa says: The punishment for abducting a woman, living concealed (under the custody of her husband or other male relations), should be as prescribed (in books on law) but half of that punishment is to be inflicted on the man, who cohabits with another man's wife, come to him of her own accord.[103]

D. V. adds that according to Ratnākara (p. 392), 'the word *Yathoktaḥ* (i.e. as prescribed) means 'fine of the highest amercement' and similar other appropriate punishments, according to it (i.e. D. V.) and that according to the same authority (*loc cit.*), 'half of the prescribed punishment is to be inflicted on those persons only, who cohabit with (the willing) wives of other persons other than those of the impotent and similar other physically incapacitated men, cohabitation with whom is considered innocent'.

Bṛhaspati (XXIV.16-17) has said: If a woman, coming to a man's house and alluring him by touches, courts him, she is to be punished (with the proper penalty) and the man involved should be awarded half the penalty. The punishment in such cases is to have the nose, lips and ears of the offenders cut off, to make them roam about (the city) and to drown them into water or to offer them as food to dogs in a place, filled with many men.

D. V. adds that it naturally follows from the above text that a man, who cohabits with another man's wife after alluring her, gets the full punishment and that the penalty of mutilation of the nose etc., (which is the only punishment for this class of women) is an alternative higher punishment for such men. (Cf. Ratnākara p. 398 for the similar original Sanskrit paragraph, conveying the above sense, though rather expressed in the same clumsy manner, which has been simplified by us).

Kātyāyana says on this topic: (Defaulting) women under coverture[104] are not to be arrested(and punished by the King) but their husbands, who

[103] D. V. reads *gacchantyām* for *icchantyām*, which has been correctly read by Ratnākara (p. 392).

[104] D. V. reads *nāsvatantrāḥ* (= *na* + *asvantatrāḥ*) and explains *asvatantrāḥ* as *sasvamikāḥ*, i.e. 'with their husbands living', while *Ratnākara* (p. 339) reads *na satantrāḥ* but explains the latter word similarly, the negative particle being construed by both with the verb,

are the real offenders (when the former go wrong) should punish them and the king should take them to the latter (for punishment).

D. V. adds that according to Ratnākara (p. 399) the punishment on erring married women (with their husbands living) should be inflicted on them (by the king) through their husbands.[105]

The same authority (V. 489) further says: If a married wife, whose husband has gone abroad, is arrested by king's men for her setting out for her paramour's house, she is to be kept confined in a prison only till the return of her husband.

The general principles of punishment in cases of illicit sexual intercourse have thus been explained.

The special punishments for *performing sexual intercourse* WITH OTHER MEN'S WIVES *by the practice of force, fraud and other condemned methods* have thus been laid down by Bṛhaspati: (XXIV.13-15): He, who ravishes (a woman i.e. another man's wife) by force (*sahasā*), should have his entire property forfeited (by the king), who should also cut off his penis and testicles and make him circumambulate (the city or the locality) on the back of an ass. But he, who does so by taking recourse to fraud, should be punished in various ways such as by imprinting his person with figures of the female private parts and banishing him from the city (or the territory). If the above offence has been committed upon a woman of the same caste (as that of the offender), the latter should get the punishment of the highest amercement. In cases of commission of the offence in respect of women of lower and higher castes (than that of the criminal), the latter will be awarded half (*ārdhikaḥ*) of the above punishment and sentence of death respectively.

D. V. adds: In the first part of the above texts, the commission of the above offence by taking recourse to force or fraud also includes within itself the additional fact of the unwillingness of the ravished woman. The list of punishments for a fraudulent ravisher also includes the forfeiture of his entire property. In the last part, the infliction of the punishments of the highest and half of the highest amercements on the ravishers of women of equal or inferior castes will be made in cases, not involving force or fraud but by the sending of emissaries to those women. Half of the punishment (*ārdhikaḥ*) means the middle amercement. In the cases in connection with superior caste women, involving both force or fraud and the sending of intermediaries, sentence of death will be the proper punishment. This is the opinion of Ratnākara (p. 388). In view of the above opinion, it follows that the punishments for ravishing women of the same as and lower than the

[105] D. V. has the wrong reading *svāmitve tair eva* for *svāmidvāraiva*, read both in (p. 399 of Ratnākara) and in D. V. as a variant.

caste of the offender shall be higher than the highest amercement and equal to it respectively, when such offences have been committed with force or fraud and the penalty for an inferior caste man, doing so upon a superior caste woman on the above conditions, is death, after having inflicted tormenting injuries on the body of the criminal, in view of the more heinous character of the offence or on the authority of the following text, quoted in the Kāmadhenu and other digests as of Manu (VIII.372 a) in the topic of arrogantly outraging a woman's modesty: (The king) should burn (to death) the sinner (i.e. offender), after having made him lie down upon heated iron.

Yāj. says: In cases of such (outraging of the modesty of) higher caste women, the (offending) man should be put to death and the (consenting) woman, so outraged, should have her ears and other organs (*ādi*) cut off.

D. V. adds: The author of the Mit. is of opinion that the addition of the word *ādi* to *karṇa* (i.e. ears) implies 'mutilation of the nose etc.' but according to Ratnākara (p. 389) the word means 'hairs'. The Kāmadhenu has read the compound word as *Karṇāvakartanaṁ* (=*Karṇa*+*avakartanaṁ*). The view of Ratnākara (*loc. cit.*) that the sentence of death, laid down in the above-quoted text of Bṛhaspati, also applies to the (outraged) women with the additional punishment of mutilation of her ears and similar other organs or parts of the body, is to be construed, it seems, with those cases only, where a woman of a higher caste gives her express consent to perform sexual intercourse with her to a man of a caste, lower than hers and not in other cases, where no such offence is known to exist.

THE *special punishments* FOR COMMITTING SEXUAL INTERCOURSE (WITH OTHER MEN'S WIVES), IN CONSIDERATION OF THE *secluded or un-secluded conditions* OF THE WIVES THEMSLVES AND THEIR *belonging to higher or lower castes* THAN THE CULPRITS INVOLVED, WILL NOW BE LAID DOWN.

Yāj. (II.286a) lays down: If (such prohibited sexual intercourse is performed by a man) with a woman of his own caste, (he) will be fined the highest amercement (*uttamo daṇḍaḥ*) but if with a woman, belonging to a caste, lower than his, the middle amercement.

D. V. adds: This prescription applies to members of all the castes and relates to cases of forcible commission (i.e. rape) with secluded women. The author of the Mit. has interpreted the word *uttamaḥ* as *uttama-sāhasa*, which is equal to the payment of one thousand and eighty *paṇas* as fine. The interpretation is justified by reason of the interpretability of that punishment by the fine of that number (*of paṇas*).

Manu (VIII.378A and 382-3) lays down: A Brāhmaṇa, forcibly cohabiting with (i.e. committing rape upon) a secluded Brāhmaṇa woman, shall be fined one thousand (*paṇas*), which will be reduced by half if he cohabits

with a willing woman (i.e. if it is a case of adultery). The punishments for a Vaiśya, committing forcible cohabitation with a similar Kṣatriya woman and for a Kṣatriya, doing so with a (similar) Vaiśya woman, will be the same as that for committing the same offence with an un-secluded Brāhmaṇa woman (*Yo brāhmaṇyām aguptāyām*). But if a Brāhmana outrages the modesty of secluded Kṣatriya or Vaiśya women, he shall be fined a thousand (*paṇas*) and the same punishment (*sāhasro*)[106] will be inflicted on Kṣatriyas and Vaiśyas, committing the same offence in respect of a secluded Śūdra woman.

D. V. adds the following comments: Nārāyaṇa has said that the phrase '*Yo brāhmaṇyām aguptāyām*' indicates that the punishments to be inflicted in such cases on a Vaiśya and a Kṣatriya will be five hundred and one thousand (*panas*) respectively. But Ratnākara (p. 392) has explained it as meaning 'the middle amercement'. The view of the author of the Mit. is the same as that of Nārāyaṇa, cited above (*sahasrapaṇa*[107]*--pañcāśatpanātmakam*).

So the same author, after having explained a half-text (of Yāj. II.286a cited above), beginning with the word *sajātau* (or *svajātau*), has quoted the first and third verses of the present text of Manu (consisting of three verses) as special prescriptions of the latter authority regarding the above offence, committed on unsecluded women of the same caste (as that of the offender) or on secluded women of lower castes in due order and he has cited the middle verse (of Manu), after having prefaced it with the words *tad āha* (i.e. so the same authority has laid down), to prescribe the punishments of a thousand and five hundred *paṇas* to be inflicted on Kṣatriyas and Vaiśyas (respectively) in their cohabitation of the wives of those two castes in mutual fashion.

Thus it appears that there is an *avagraha* (i.e. S) between the words *dāṇḍyo* and *guptām*, which will collectively become *daṇḍyo S guptām* (to be more consistent), in view of the fact that the Brāhmaṇa, forcibly ravishing a Brāhmaṇa woman, who has been *kept secluded*, shall be fined one thousand *eighty* (*paṇas*), as Yāj. (II.286a, quoted above) has prescribed the punishment of the highest amercement upon him (and the Mit., also quoted above, has explained it as 'one thousand *and eighty* (*paṇas*))', while similar offence, committed in respect of an *unsecluded* Brāhmaṇa woman, is one thousand *paṇas* only. The residual portion of the first of the verses (of Manu) means that in cases not involving force (of the offender) (but consent of the woman concerned), the fine of five hundred *paṇas* will be the proper punishment.

Thus the prescription of both Kṣatriya and Vaiśya offenders' punishment is to be construed with the just following part of the above sentence (of the

[106] D. V. misreads *sāhasro* as *sāhaso*.

[107] D. V. misreads the first portion of this compound word as *sahasrapaṇaṁ*.

second verse and beginning with the words viz. *Yo brāhmaṇyām*), as that construction will do away with the invidious[108] discrimination (made by the Mit.) between a Vaiśya and a Kṣatriya, committing cohabitation with each other's woman, the cohabitations being thus of the *pratiloma* and *anuloma*[109] varieties respectively.

Though Kullūka Bhaṭṭa has explained that in cases of cohabiting with an unsecluded Brāhmaṇa wife, a Vaiśya and a Kṣatriya are to be awarded the punishment of fines of five hundred and a thousand (*paṇas*) reespectively, the punishments being justified in their cases, yet those punishments are not just the same, prescribed by Ratnākara (p. 392) which are somewhat contradictory (with those, laid down by Kullūka) and the interpretation of the Mit. of the word *tat-samam*, (occurring in the above middle text of Manu,) that it prescribes the equal amounts of the punishment to be paid as fines for cohabiting with an unsecluded Brāhmaṇa wife has also the only difference of the first text (of Manu) being applicable to a Brāhmaṇa offender and the middle text jointly to a Kṣatriya and a Vaiśya ones. But the above somewhat different views (of Ratnākara and the Mit.) do not materially affect the final conclusions. If it is argued that extenuation and aggravation of punishment are justified in cohabiting with lower caste and higher caste females and consequently the above three different interpretations (of Nārāyaṇa, Ratnākara and Kullūka) are contradictory to one another, Kullūka Bhaṭṭa himself has thus clarified the point: The above punishment is to be understood as relating to a meritorious Vaiśya, cohabiting with a non-meritorious Kṣatriya woman, being a Kṣatriya by caste only, the offence having been committed by mistaking her as a Śūdra woman and hence the lesser punishment (is to be inflicted upon him).

The phrase *gupte tu te* (in the last text of Manu) means 'such secluded Kṣatriya and Vaiśya women (taken together)' and *rakṣitāyām* (i.e. secluded) is to be supplied after *śūdrāyām* (in the above text). The punishments for cohabiting with all classes of secluded women are to be intensified in cases of doing so with women of highly secluded character on the authority of the following text of the Matsya-purāṇa: The punishments for (ravishing) highly secluded women shall be higher than those for doing so in relation to secluded women.

The same authority (VIII.375-7) further says in continuation of the clause

[108] D. V. reads *naiyāyikam* here, which should more fittingly be read as *a-naiyāyikam*. and an *avagraha* be placed between° *strīgamane* and *naiyāyikam*.

[109] *Pratiloma* (connection) means 'that between a lower caste male and a highest caste female, and *anuloma* (connection) means just the opposite.

dvaijātam varṇam āvaśan[110], [i.e. cohabiting with the wife of a member of the twice-born caste (*dvijāti*)], occurring in VIII.374: A Vaiśya (convicted of the above offence) should be put into imprisonment for the period of one year and then should have his entire property forfeited (by the king), while a Kṣatriya offender should be fined a thousand (*paṇas*) and should have his head besmeared with urine (*mūtreṇa*)[111] A Vaiśya and a Kṣatriya, outraging the modesty of an *un-secluded* Brāhmaṇa woman, should only be fined five hundred and one thousand (*paṇas*) only but members of the above two castes (*ubhāvapi tu tāveva*) convicted of the same offence in relation to a *secluded* Brāhmaṇa woman, should be punished like a Śūdra offender, committing the above offence or burnt (to death) with fire, made of grass.

D. V. adds the following comments: The words *dvaijātaṁ varṇam*, though apparently applicable to the three twice-born castes, here refer to Brāhmaṇa women only, as a special statement (in a later text of Manu VIII.382) has already been cited by us. The word *mūtreṇa*, according to Kullūka's explanation in his commentary on Manu, means 'with the urine of an ass'. The same commentator has further said that the punishment, prescribed in Manu (VIII.376) above in respect of a Vaiśya offender, convicted of cohabiting with an un-secluded Brāhmaṇa woman, relates to a non-meritorious Brāhmaṇa woman, leading her life as a Brāhmāṇa's wife only, ravished by the Vaiśya under the mistaken notion that she is a Śūdra woman. Thus the leniency of the punishment, prescribed here, is easy to understand. (Nārāyaṇa) Sarvajña has justified the higher punishment of one thousand (*paṇas*) on a Kṣatriya offender on account of his inherent duty of protection of the people. But another authority has restricted the punishment of the offenders, belonging to the above two castes (and possessed of five hundred and one thousand copper coins only) to the payment of five hundred and one thousand (*paṇas*) respectively: The punishments of the offenders of the above two castes (*ubhau*) for cohabiting with a secluded Brāhmaṇa's wife have been laid down (by Manu) like that, inflicted on a Śūdra offender, convicted of the above offence, and are forfeiture of the entire property and mutilation of all the limbs or burning (to death) with fire, generated by grass, on the authority of the following text of Vaśiṣṭha: (The king) should envelop the bodies of the Śūdra, Vaiśya and Kṣatriya offenders with ordinary grass (*vīraṇaih*) red grass and thorny leaves (*śarapatraiḥ*) and have them burnt (to death). The commentary on Manu (by Kullūka) adds that the above punish-

[110] D. V. has misread it as *āviśan* but not only Manu (VIII.374) but also D. V. on p. 172, while quoting the whole text, have read it as *āvasan*.

[111] D. V. reads it as *śudrasya* in the body of the text but not only offers the variant *mūtreṇa* but also includes and explains the latter reading in the accompanying comment.

ments for the offenders of the above two castes (viz. *Vaiśyas* and *Kṣatriyas*) are to be inflicted for their cohabitation with meritorious Brāhmaṇa wives only. So this opinion does away with the apparent conflict with the forfeiture of property and fine of one thousand *paṇas* respectively, prescribed above. Nārāyaṇa (another commentator of Manu) has also said that the above two sorts of punishments are to be inflicted in consideration of the outrage having been committed on non-meritorious and meritorious Brāhmaṇa wives.

The same authority (i.e. Manu VIII.384) further lays down: For, the offence of cohabiting with an unsecluded woman, a Vaiśya shall be punished simply with a fine of five hundred *paṇas* but a Kṣatriya should either have his head besmeared with urine or[112] be awarded[113] the above fine.

D. V. further adds in his comments on the above text that Lakṣmīdhara the author of the (Kṛtya-) Kalpataru] has read *mauṇḍyam eva* instead of *daṇḍam eva*, which former phrase means '(only) shaving the head (and not besmearing it with urine afterwards)'.

The same authority (i.e. Manu VIII.385) further says: A Brāhmaṇa, cohabiting with an unsecluded Kṣatriya, Vaiṣya or Śūdra woman(*śūdrām vā*), should be only fined five hundred (*paṇas*), which should be enhanced to one thousand (*paṇas*), if the offence is committed in respect of the wife of a member of an untouchable caste.

D. V. adds that Nārāyaṇa (a commentator of Manu) has qualified the word *śūdrāṁ* in the above text by the phrase *guptām aguptām vā* (i.e. secluded or unsecluded), and that according to it (i.e. D. V.) the Śūdra woman, spoken of here, means 'an inferior type of Śūdra woman' on the authority of the text of Bṛhaspati viz. *hīnāyām ārdhikaḥ*[114] (Cf. D. V., p. 165 above) and thus implies 'a Śūdra woman, previously enjoyed by other men', as banishment of the offender has been laid down as the punishment for outraging the modesty of a Śūdra woman, not so previously enjoyed. (Cf. Ratnākara, p. 393).

So Āpastamba (II.27.8) says: An *Arya*, (if married to or outraging the modesty of) a Śūdra woman, is to be done, away with (*nāśyaḥ*).

D. V. adds that the word *āryaḥ* means a Brahmana or a member of any other superior caste, and the word *nāśyaḥ* means 'is to be banished'. (Cf.

112 D. V. reads *ca* (i.e. and) but both Manu and Ratnākara (p.395) (*loc.cit.*) read *vā* (i.e. or). But D. V. in its explanatory comments on this text adds *yad va* (i.e. or rather) between the two kinds of punishment.

113 D. V. reads *ṛcchet tu* for *icchet tu*, read bath by Manu and Ratnākara (*loc-cit*) (p.395).

114 D. V. reads *ārdhikaḥ* in the text of Bṛhaspati, quoted by it on p. 165 above but reads *ardhikaḥ* here.

Ratnākara, *loc . cit*). The Śūdra woman, referred to here, is one such, not previously enjoyed by others and married by a Brāhmaṇa. The author of the Kalpataru has consequently interpreted the word '*hināyāṃ*' (in the text of Bṛhaspati) as 'in a virgin or unpolluted Śūdra woman'. (Cf. Ratnākara, *loc. cit.*). Somebody has, however, interpreted the above word, occurring in the above text of Bṛhaspati, as meaning 'a woman of a caste, inferior to a Śūdra', which is wrong, as it is conflicting with the punishments prescribed above and also because the fine of the middle (highest ?) amercement is lighter than banishment.

Manu (VIII.374) again says: A Śūdra, cohabiting with a woman of the *dvijāti* (i.e. twice-born caste or castes) of the unsecluded type, should lose (as punishment) one of his limbs and his entire property and with such a woman of the secluded type, should lose all his limbs (i.e. shall be put to death) and forfeit his entire property (*agupte Sṇgaika-sarvasvair gupte sarveṇa hīyate*).

D. V. adds: The Ratnākara (p. 395) and other authorities have read the second line of the above text as '*aguptaikāṅga-sarvasvī*' (the very reading, recorded by Ratnākara) or '*aguptāṅgaika-sarvasvair*', both the readings somehow making out the meaning of that portion of the above text, as done by us from our reading of the same. But the reading, adopted (by Kullūka) in his commentary *on* Manu, is '*aguptam aṅgasarvasvair guptam sarveṇa* (*hīyate*)', (which reading also means the same thing and is found in the printed Manusmṛti and correspondingly explained in the accompanying commentary of Kullūka on the above text.) But the Kalpataru has read this line as '*aguptam aṅgasarvasvī guptaṁ sarveṇa hīyate*' and explained it as follows:

(For cohabiting with) an unsecluded woman (of the *dvijāti* class or classes), the offender is made devoid of his offending limb and his entire wealth but loses only all his limbs (i.e. is put to death) if the offence has been committed in respect of a secluded woman.

So in this view no punishment of forfeiture of the entire property is inflicted on the outrager of a secluded woman (of the above class or classes).

Gautama (II.3.2-3) has laid down the following dictum in continuation of the punishment for a Śūdra (committing the above offence): (The punishments of a Śūdra) for ravishing the (unsecluded) wife of an *Ārya* are mutilation of his genital organ and forfeiture of his entire property, while the penalty for committing the same in respect of a secluded wife (of an *Ārya*) includes sentence of death.

D. V. adds the following comments: The phrase *Ārya-strī* means 'the wife of any member of the three (higher) castes'. By reason of this prescription (of Gautama) the one limb, spoken of in the previously quoted text

(of Manu), means 'the genital organ, i.e. the penis' and the mutilation of all the limbs of the offender is 'nothing but the sentence of death', owing to the implied similarity of both the prescriptions. So, after having said that Manu has prescribed the above-described punishments, the author of the Mit. has quoted the above-cited text of Manu. The interpretation by somebody, amounting to the cutting off of any one limb of the person, convicted[115] for violating the chastity of an unsecluded woman, is, therefore, to be rejected.

Āpastamba (II.27.9-10)* says: If a Śūdra, after having (married or) approached an *Ārya* wife, cohabits with her, he is to be put to death. His wife also should be punished.

Hārīta also says: The king shall tie up the violator, (belonging to an inferior caste) of the bed of (i.e. of the chastity of the wife of) a superior (caste) man and offer his body as food to dogs and shall burn (to death) with fuel the (violated) woman also.

Gautama (III.5.14-16) also lays down: The king should, moreover, have the woman, approaching (of her own accord) a man of a caste, lower than her own, devoured by dogs and/or should publicly put to death the man involved or inflict upon him the (alternative) punishments laid down.

D. V. adds: The phrase *hīna-varṇa-gamane* (in case of her approaching a man of a lower caste) implies the woman's, carnal desire. According to Ratnākara (p. 396), the words '*yathoktaṁ* (*vā*)' mean 'or make the man also be devoured by dogs' but according to the Pārijāta 'or cut off his penis and forfeit his entire property'.

(Yama)[116] lays down the following prescriptions in continuation of his previous statement (recorded here just afterwards), beginning with the clause viz. *vṛṣalaṁ sevate* (*yā tu*) *Brāhmaṇī*, (i.e. the Brāhmaṇa woman, who cohabits with a Śūdra): The king ahould put to death the Śūdra (so involved) on a heated bed, made of iron and burn the sinner (alive) with wood, leaves[117] and grass. The king should cause the Brāhmaṇa woman, cohabiting with a Śūdra, out of vanity due to her pride, to be devoured by dogs in a place, inhabited by persons, carrying out the order of the execution of criminals, sentenced to death:

D. V. adds: The persons, referred to in the concluding portion of the above text, means '*Cāṇḍālas*', So it is evident (from the above two texts of Yama) that owing to the mention of the word *prakāśam* (i.e. publicly) in connection with putting the male person to death in the above-cited text

115 D. V. reads *vaddhasya*, which literally means 'arrested'.

116 D. V. omits the word *Yama* at the beginning of the following first verse.

117 Ratnākara (p. 395) reads *parṇaiḥ* instead of *patraiḥ*, both meaning 'leaves'.

of Gautama, the punishment of the female person in the form of her body being devoured by dogs (is also to be carried out in public) and the idea of the infliction of that punishment on her secretly is erroneous and should, therefore, be rejected.

The same authority (i.e. Yama) further says: When a Brāhmaṇa's wife cohabits with either a Vaiśya or[118] a Kṣatriya, she is to have her head shaved and she is to be made to roam about (the locality) on the back of an ass.

D. V. adds: The prescriptions, made here by Vaśiṣṭha, viz. shaving the head of the offending Brāhmaṇa woman, already made naked, making her swallow clarified butter, mount on an ass and roam through the public thoroughfares, are in the form of penances (and not punishments), owing to the concluding sentence, appended to that prescriptive statement, viz. *pūtā bhavati* [i.e. (she) thereby becomes purified (of her sin)]. (Cf. Ratnākara p. 396).

So the above last text (of Yama), as read in the Kalpataru with the ending clause viz. *śūdram agnau prāsyet* [i.e. (the king) throw (the defaulting Brāhmaṇa woman) into fire for (cohabiting with) a Śūdra] and the text of Bṛhaspati, beginning with the clause viz. *anicchantī ca yā bhuktā* [i.e. the unwilling woman, ravished (by somebody)] (Cf. Ratnākara p. 399) have either been overlooked or not quoted here.

Manu (VIII.371-2) says: The woman, who, having been slighted by her husband's relations out of envy for her personal beauty (or, out of the vanity for her personal beauty and relations of her father's family) (*jñāti-strī-guṇa-darpitā*) trangresses her husband, should be made by the king to be devoured by dogs in a place, peopled by many persons. (The excutioners) should also burn (to death) the sinning paramour of the woman in a bed, made of heated iron or he may be burnt (to death) with the remaining fuel, (used for burning the woman to death earlier) and should supply[119] just enough fuel, needed to complete the burning.

D. V. adds: According to Ratnākara (p. 398), the word *laṅghayet* (i.e. transgresses) means 'goes over to another man, leaving her husband' and the compound word *jñāti-strī-guṇa-darpitā* means 'having been slighted[120] by the relations of her husband's family[121] out of envy for her womanly beauty'. But (Kullūka) Bhaṭṭa in his commentary on Manu has read the above compound word as *strī-jñāti-guṇa-darpitā* and explained it as '(a

[118] D. V. vā for *vāpi*, which has been rendered necessary here for metrical reasons and correctly read as such in Ratnākara (p. 397).

[119] D. V., though giving the correct reading *dadhyuśca* (i.e. should supply) as a variant in the footnote, misreads it as *dadyuśca* in the body of the text.

[120] Ratnākara (p. 398) reads *tucchīkṛtā* (i.e. having slighted) but D. V. misreads it as *dīptīkṛtā*.

[121] Ratnākara (*loc. cit.*) reads *jñātibhiḥ* but D. V. misreads it as *jñātīti*,

woman, who transgresses her husband) out of pride for her wealthy father and other relations of his family and also for her personal beauty'. But Nārāyaṇa, though reading the above compound word as we have done, interprets it to mean just as Kullūka has done.

The phrase *saṁsthāne bahu-saṁsthite* (i.e. in a place, peopled by many persons) means 'in a public lawn and similar other places.'

Viṣṇu (V.18) also says in continuation of his previous statement, containing the word *hanyāt* (i.e. should put to death): The wife, not yet enjoyed by her husband (*asakta-bhartṛkāṁ*) and approaching another man (by transgressing her husband).

D. V. adds that according to Ratnākara (p. 399), the above text is to be construed with *hanyāt* [i.e. (the king) should put (to death such a wife)] and that a different reading with a (palatal) śa is also seen in the above word[122] *asakta°*

PUNISHMENTS FOR COHABITING WITH LOWCASTE AND UNTOUCHABLE WOMEN

The text of Manu (VIII.385), concluding with the phrase *sahasrantvantyaja-striyam*, has already been cited above. Ratnākara (p. 393) has interpreted the word *antyaja-striyam* as 'the wife of a washerman and similar other classes of men', (Vācaspati) Miśra has explained it as 'the wives of washermen, leather-workers and similar other men' and the author of the Mit. as 'the wife of a *Cāṇḍāla*'. Kullūka Bhaṭṭa also, having derived the component word *antyaja* as '*ante bhavo antyo*' (i.e. sprung out of the lowest class of men), has explained it as 'a *Cāṇḍāla* and similar other persons, below the status of whom no other inferior class of Śūdras exists' and so according to him, the whole word *antyaja-striyam* means 'the wife of a Cāṇḍāla etc.' The punishment by death for cohabiting with such women, prescribed (in various texts), is applicable to criminals of castes other than Brāhmaṇas.

Yāj. (II.294) lays down: (The king) should order banishment (of the offender), convicted of cohabiting with an *antyā* (i.e. an untouchable woman), after having imprinted the figure[123] of a headless person and a Śūdra (convicted of the above offence) should also be similarly stigmatised with figures and sentence of death shall be prescribed for an untouchable person, if he cohabits with an *ārya* woman.

[122]But Ratnākara (p. 399) reads and explains the word as *avaśakta°* and also adds the variant *avasakta* in the footnote, which also contains two other variants such as *anupayukta°* and *anupabhukta°*.

[123]D.V. reads *tvaṅkam kabandhena* and also contains the better reading *tvāṅkya* (*tvaṅkya?*) as a variant. Ratnākara (p. 394) reads *tvaṅka-kabandhena*,

D. V. adds the following long commentary: According to Ratnākara (p. 394), the first line of the above text means '(The king) should have the body of the criminal, belonging to the three upper castes, imprinted with the headless figure of a male person and banish him from the territory (for cohabiting with an untouchable woman).' The Kalpataru is also of the same opinion. But the author of the Mit. has expressed the opinion that (banishment should be ordered) 'after having disfigured the body of the offender with the ugly figure of the female organ etc.' This opinion is also correct as it is according to equitable principles. The Kamadhenu and Kalpataru have read the (first) portion viz. *tvaṅka* (of the compound word *tvaṅka-kabandhena*) as '*cāṅkya*', where the use of the *lyap* suffix, normally added to roots with a prefix, instead of *ktvāc*, in the simple root *aṅk*, may be justified as being an archaic usage (*ārṣa-prayoga*). The Mit. says that an additional pecuniary punishment is also to be imposed here on the authority of the following (concluding) clause in Manu (VIII.385), meaning 'a thousand (*paṇas*) (should be imposed as fine on the person, who cohabits with) the wife of an untouchable person'. From the clause '*śūdras* (*tathā*) *sṅkya eva*', containing the particle *eva* (meaning 'only), the order for his banishment is only prohibited (by the above text), which interpretation does not conflict with his death-sentence. The Pārijāta, however, has read the above portion as '(*śūdrastathā*)' *antya eva syāt*' and explained it as 'A Śudra (committing the above offence) is degraded (by his above criminal action) into an untouchable person and cannot afterwards be taken back into the Śūdra fold'. The Mit. also, having read it similarly, has interpreted the above as 'A Śūdra, having cohabited with an *antya* such as a *Cāṇḍāla*,[124] becomes transformed into a *Cāṇḍāla*,'.

Though, owing to the enumeration by Yama in his following text, washermen and similar other persons are to be known as *antya-s* and also on account of the just quoted interpretation of the Pārijāta, a *Cāṇḍāla* is a *mleccha* like the *yavanas* and similar other classes of persons (i.e. a person outside the Hindu fold) and is not fit to be enumerated as a Śūdra, yet, owing to the explanations, offered on the above text, by such learned commentators as Kullūka Bhaṭṭa and also due to their almost similarity, he (i.e. a *Cāṇḍāla*) may be distinguished from a Śūdra but by the use of the word *antyaja* in the text of Manu (VIII.385), referred to above, washermen and similar types of men are intended.

Yama's text: The members of the following seven castes are known as *antyaja-s*:—A washerman, a leather-worker, an actor, a *varuḍa*, a kaivarta, a bheda and a bhilla.

[124] D. V. misreads *cāṇḍālāntyābhigame* as *cāṇḍālānyabhigame*,

Nārāyaṇa has also said in course of his interpretation of the above term that *antyaja-s* such as washermen are of seven castes, as laid down in a Smṛti (i.e. of Yama). But (in our opinion) the word *antyā*, occurring in the above text of Yāj. (II.294), means 'the wife of a Cāṇḍāla and of members of similar other untouchable classes', as such women are more despicable than wives of washermen and similar classes of men and the punishments of imprinting the person with characteristic figures and subsequent exile are heavier than the payment of the fine of one thousand (*paṇas*), and both the lowliness of caste and the heavicr character of punishment tally together. The author of the Ratnākara (p. 394) also holds the same view, as the word *antya* in his following explanatory sentence of the above Yāj. text is intended to mean such, 'An *āryā* means the wife of a member of the three higher castes, cohabiting with whom an *antya* (i.e. a *Cāṇḍāla*) is to be put to death'. If it is argued that this interpretation of the Ratnākara is conflicting with the following half-text of Manu (VIII.373b) viz. "for cohabiting with a *Vrātya* woman or with a *Cāṇḍāla* woman (the punishment of an old offender is doubled)", we say in reply that no such conflict arises here, as the import of that non-conflicting opinion (of Manu) has been elaborated by us in the very beginning of the sub-chapter on the general principles of the punishment of intercourse with other men's wives. An optional allotment of the punishments over different classes of criminals involved may be made in cases of different punishments (prescribed by different authorities), viz. Imprinting of characteristic figures, followed by banishment, relates to the poorer members of the three higher castes and the imposition of a fine of one thousand (*paṇas*) concerns itself to richer members of the above castes.

REGARDING INTERCOURSE WITH ONE'S OWN RELATIONS (i.e. INCEST) AND WITH THE QUEEN AND SIMILAR OTHER DIGNIFIED WOMEN

Nārada (*strīpumsa* VV. 73-76) has prescribed the following punishments:

The person, who performs sexual intercourse with anyone of the following women, is technically called a *guru-talpaga* (i.e. violator of the bed of one's elders) and no other punishment than mutilation of the male organ (of the offender) has been prescribed for this class of criminals: Mother (*mātā*), mother's sister, mother-in-law, mother's brother's wife, father's sister, wives of paternal uncle, friend and pupil (or disciple), sister, her female friend, daughter-in-law, daughter, teacher's wife, any agnatic woman (*sagotrā*), a woman refugee, queen (*rājñī*), a female recluse (*pravrajitā*), any chaste woman, nurse, any woman of a superior caste (*varṇottamā*).

D. V. adds: The word *mātā* (lit. 'mother) is "father's any other wife than the actual mother", on the analogy suggested by the word *gurutalpaga*. The

anthor of the Mit. is of opinion that the insertion of the word *mātā* is illustrative. The mention of the paternal uncle also includes within its category on equitable grounds "brothers and similar other nearest blood-relations". Similarly, sister's female friend also includes 'female friends of daughters and similar other female relations'. According to the author of the Mit. the word *rājñī* (i.e. queen) means "the queen consort". This interpretation is right, as other punishments have been laid down for intercourse with an ordinary Kṣatriya woman. The additional mention of the word *sagotrā* over and above the step-mother (*sapatnīmātā*) and similar other women of the motherly status is for the imposition of higher penalties than simply cutting off the male organ, such as harassment and similar other corporal punishments (*vadha- daṇḍa-tāḍanādeḥ prāptyartham*). The clause viz. *nānyo daṇḍo vidhīyate* (i.e. no other punishment has been prescribed) implies the imperative character of the mutilation of the male organ (of the offender) and means in plain words that no other punishment is to be inflicted in lieu of the above punishment (but any other punishment may be inflicted over and above this punishment), as appears from the full meaning of the entire text, quoted above. The word *pravrajitā* means 'a woman, living as a nun owing to her aversion to worldly pleasures and properly discharging the duties of a widow, as laid down in the Vedas and Smṛtis', as monasticism is forbidden for females and such a woman ranks among the highly respected ones, the word *pravrajitā* having been placed just after the word *rājñī* (i.e. queen). The word *pravrajitā*, used in the following text of Yāj. (II.293b): "The fine of forty *paṇas* is (to be inflicted on a man) for (his) cohabitation with a *pravrajitā*", means 'the wife of a follower of Buddhism and other heretic religions' and carries with it an idea of lowliness, the word having been used along with the word *dāsī* (i.e. female servant) and other words. So the above text is not conflicting with the text of Nārada. The word *varṇottamā*, according to the author of the Mit., means 'a Brāhmana woman'. The Ratnākara (p. 391) has said that this text relates to a secluded woman[125] (*tad-idam vacanam guptāviṣayam*).

Yāj. (III.232-3) also lays down: A person, who cohabits with the following women, is called a *guru-talpaga* and such a person and the willing (*sakāmāyāḥ*) woman, so cohabited with, should have their respective private parts cut off (or pierced into) and then they should be put to death: Father's sister, mother's sister, mother's brother's wife, daughter-in-law, mother's co-wife (i.e. step-mother), one's own sister, daughter and wife of one's teacher and one's own daughter.

[125] The Ratnākara adds just before the above sentence '*mātāstra janani-vyatiriktā pitṛ-patnī*' (i.e. the word 'mother' means here 'father's wives other than the mother' (cf. D. V.'s comments—beginning portion).

D. V. adds: The queen, the mother-in-law and similar other women are to be included in the above list, as their names have been inserted in the previous text (of Nārada) along with those of father's sister etc. and all these women (both included and not included in the present text) are equally venerable or affectionate. So it appears (contrary to the view of Ratnākara, cited just above) that the previous text (of Nārada) relates to non-secluded women, whereas the present text, laying down a heavier punishment, concerns itself with secluded women. The same heavy punishment is to be inflicted on equitable grounds also in cases, entailing social degradation of the offenders (of both sexes).

Yama says on this topic: A *dvija* (i.e. a member of any one of the three higher castes or a Brāhmaṇa), cohabiting with his mother's sister, mother's female friend, own daughter, father's sister, mother's brother's wife, own sister or mother-in-law, immediately becomes socially degraded.

Gautama (Part of III.3.1) also lays down: Persons, having sexual connections with women, related to them by the father's or the mother's line, are degraded.

PUNISHMENTS FOR DEFILING UNMARRIED GIRLS

The unmarried girls may be of three kinds, viz. of superior status, of the same status and of inferior status in comparison with the respective castes of the defiling persons. The defiling also may be perpetrated on those girls in two ways, viz. by cohabilation and by thrusting fingers into their private parts.

After having described the grave sins (*mahā-pātakāni*), Manu (XI.59 and 61a) has said: Pouring the seminal fluid into the genital organs of one's own sisters, other unmarried girls, untouchable women and the wives of one's friends or of one's sons is known to be an equally heinous offence like *gurutalpa* (i.e. violating the teacher's bed). Defilement of unmarried girls and atheism[126] are also *upapātaka-s* (or minor vices).

D. V. adds that according to (Kullūka's) commentary on Manu, the defilement (of unmarried girls, spoken of above) is by thrusting fingers (into their private parts) and not by performing sexual intercourse with them. The same author (i.e. Manu, VIII.366a) has laid down the following prescription in continuation of his remarks, concerning a *Kanyā* (i.e. unmarried girl): The wretch, who cohabits (illegally) with a woman of a *caste, higher than his*, deserves sentence of death. D. V. adds that the clause 'even if such woman

[126] Manu reads the second half of this half-text as *vārdhuṣyaṁ vrātalopanam* instead of *nāstikyaṁ copapātakam*, read by D. V.

be a consenting party to the cohabitation' (*icchantīm api*) should be added to the phrase 'with a woman of a higher caste' (*uttamāṁ*).

Nārada (*stripuṁsa* V.71) says: Two fingers of the person, (which were thrust into the private parts) of an unwilling maiden, are to be cut off and forfeiture of the entire property, followed by the extreme penalty, shall be ordered for doing so in respect of a girl, belonging to a superior caste.

D. V. adds: The two fingers, spoken of, are those, which have been used for some sort of cohabitation (with that girl) performed by means of those fingers. The Pārijāta is of opinion that the above punishment is in consonance with the general rule, laid down in the following maxim, viz. The limb or organ of the body, with which the offence has been committed (by the offender), should be cut off.

Śaṅkha-likhita have laid down: The mutilation of the two (incriminating) fingers of the wretch, (who has committed the condemned act of thrusting them) into (the private parts) of an unwilling maiden and the sentence of death for the former, doing so in respect of a superior caste girl, are the respective punishments.

D. V. adds that these punishments are also for cohabitation, committed by the two fingers.

But Hariharahas explained the phrase '*dvyaṅgulacchedo daṇḍaśca*, occurring in the above text of Saṅkha-likhita as "the cutting off of a portion of the male organ, measuring the breadth of two fingers only."

D. V. adds that the insertion of the particle *ca* (meaning 'and') implies the cumulation of the punishments of the mutilation of two-fingers-broad portion of the male organ and of the imposition of *daṇḍa*, which, in D. V.'s opinion, is the fine of six hundred (*paṇas*), as Manu (VIII.367) has said: The man, who, after having overpowered an unmarried girl, (thrusts his two fingers into) her (private parts) (*Kanyām kuryāt*), should have those fingers cut off forthwith and he also deserves an additional[127] punishment of six hundred (*paṇas*) as fine.

D. V. adds: The author of the Mit. says that the defiling (of the unmarried girl) consists is making a sore in the female generative organ by thrusting fingers. Kullūka Bhaṭṭa also expresses the same opinion in his commentary on Manu. But Nārāyaṇa has interpreted the word *Kuryāt* [in the phrase viz. *kanyām kuryāt* (in the above text of Manu)] as 'widens the generative organ (of the girl)'.

Yāj. (II.288b) also says: Mutilation of the hand (of the culprit) for defiling (an unmarried girl) and death-sentence (or any other stringent corporal

[127] D. V. misreads *daṇḍaḥ ṣaṭśatam arhati* for *daṇḍaṁ* etc.

punishment) of the criminal for doing so in respect of a *superior caste* woman (*uttamāyām*).

D. V. adds: The author of the Mit. is of opinion that the word '*anulomām*' (i.e. an unmarried girl, belonging to a caste, lower than that of the offending man) follows from the first half [(i.e. II.288a) of this text where such a woman has been referred to] and that if (a man) commits rape upon or defiles such an unmarried and unwilling girl, (the punishment of) mutilation of his hand (shall have to be inflicted). Death (or any other stringent corporal punishment) (is to be inflicted on) the defiling man for doing so in respect of an unmarried and unwilling girl, belonging to a caste, higher (than that of the man) on the authority of the text viz. *vadho hīnasya* (i.e. death sentence for an inferior caste person) and of the corresponding interpretation by Sarvajña of the word *hīnasya* as 'relating to an inferior caste man.'

Manu (VIII.3 64) has thus laid down the punishment of the defiler of an unmarried girl of the same caste as of the former: A person, who, belonging to the *same caste* (as that of the girl), defiles one such unmarried and unwilling one, deserves immediate *vadha* (i.e. death or any other stringent corporal punishment) but no such sentence of death etc. is to be inflicted on such an equal-caste man, doing so with an unmarried but consenting girl.

D. V. adds: The word *vadha* in the above text means, according to Kullūka Bhaṭṭa in the commentary on Manu, 'mutilation of the male organ etc.' but implies, according to Nārāyaṇa, 'must be awarded the punishment of death' (owing, perhaps, to the insertion of the word *sadyaḥ* before that word). So the import of the whole text (of Manu, cited above) is that sentence of death and the imposition of a fine of one thousand (*paṇas*) are the respective punishments for the defiler (of an unmarried girl of the same caste) in cases of unwillingness and willingness of the girl concerned. Both the punishments also follow from a text of the Matsyapurāṇa, laying down the penalty of death for the defiler of an unmarried and unwilling girl of the same caste and the pecuniary punishment, amounting to the highest amercement, for that of an unmarried but willing girl, also of the same caste.

Nārada (*strīpuṁsa* V.72) lays down: A man, cohabiting with a willing maiden of his *own varṇa*, thereby incurs no transgression (of law) but he should bedeck her person with ornaments and having thus purified her, should marry her.

Manu (VIII.366b) also says: Subject to the approval of the girl's father, the ravisher (of an unmarried girl) of the *same varṇa* shall have to pay *śulka* (i.e. brideprice) (to the father of the girl) (and then he will be allowed to marry her).

D. V. adds: The Ratnākara (p.402) says that *śulka* is an amount of wealth, agreed upon by both the parties, as is payable in the *āsura* form of marriage. (Kullūka) Bhaṭṭa in his commentary on Manu is of opinion that appropriate

money, called *śulka,* is to be paid and this is not a fine. But the author of the Mit. explains the term as a couple of cows (i.e. a bull and a cow) (to be payable to the father of the girl) but on his refusal to accept it, it should be paid as fine to the king. Nārāyaṇa, however, has explained in the following manner:

(The offending man) should pay lo the father (of the girl) *śulka* in the form of (the bride's) price, if he consents to give her away to that person but if he does not so consent, he may marry her to any other person.

Śaṅkha-likhita have said: If the ravished girl belongs to the *same varṇa* as that of the ravisher, the latter shall take her (as wife) after having paid *śulka* (or bride-price), ornaments and twice the ordinary *strīdhana* (woman's peculium).

D. V. adds: The *strīdhana* (payable on such occasion) should be twice what is normally paid in *āsura* and similar other forms of marriage and should be made over to the girl herself and the *śulka* should be paid to her relations (such as father, brother etc.). The man may then take her (as wife). The word *icchantyām* (i.e. if she was a consenting party to the cohabitation) should be added to the word *samāyām* (i.e. if the girl belongs to the same *varṇa*). This is the view of Ratnākara (p. 402). But according to our (i.e. (i.e. D. V.'s) opinion, the word *an-icchantyām* meaning '*un willing*', (and not *icchantyām*), is appropriate to be added here to the word *samāyām* and so in case the ravished unmarried girl of the same *varṇa* was a consenting party to the commission of the above offence, the payment of the *śulka* only (and not of the *śulka* and many other things), as laid down by Manu (VIII.366b) is the proper way of making amends for it.

Āpastamba (II.26.20-21) has prescribed in continuation of his previous statement viz. in case of ravishment, the following punishment for the ravisher (of an unmarried girl) belonging to a caste, *lower than his own*: The ravishing man, doing so in an unmarried girl, is simply to have his entire property escheated to the crown and is to be banished (from the territory).

D. V. adds that the above punishments apply to an unwilling (and unmarried) girl, belonging to a lower caste.

Manu (VIII.368) says: A person, who pollutes (by thrusting fingers), a willing (unmarried) girl (*sakāmām dūṣamāṇastu*), shall not have to have his fingers cut off but should be fined two hundred (*paṇas*) only for suppressing the repetition of the offence (i.e. as a preventive measure).

D. V. adds: According to Ratnākara (p. 403), (the above text) relates to (the pollution of) a lower caste girl. But (Kullūka) in the commentary of Manu, having read the first foot of the above verse as *sakāmāṃ dūṣayaṁ*

stulyaḥ,[128] has explained the participial verb *dūṣayan* as 'by thrusting fingers'.

Manu (VIII.365) further says: An unmarried girl, cohabiting with a man of a superior caste, shall not be compelled to pay anything as fine but one such, doing so (*sevamānām*) with a man of an inferior caste, should be kept restrained (*saṁyatām vāsayet*) in her house.

D. V. adds that it has been said (by Medhātithi?[129]) in his commentary on Manu that the word *sevamānām* means 'pressing the man to perform sexual intercourse with her' and the phrase '*saṁyatām vāsayet*' means 'made to live carefully guarded until she gives up her desire (for committing the above offence).

PUNISHMENTS FOR ABDUCTING UNMARRIED GIRLS

have been incidentally laid down here

Yāj. (II.287-8) says: Any man, who abducts a girl, bedecked (for marriage with another person), shall have to pay the fine of the highest amercement but the fine of the first amercement is to be realised from him if the girl, so abducted, is not so bedecked (and not ready for marriage with another person) These punishments are to be inflicted in cases when the abducting man is of the same *varṇa* as the abducted girl but if the latter belongs to a caste, higher than the former, the penalty of death shall be imposed. But the abductor is to be held not all guilty if he has committed the offence in respect of a willing (unmarried girl) of his own *varṇa*. But if the abducted girl (of the same *varṇa*) has not been a consenting party (to the commission of the offence) the abductor has got to pay the fine of the first amercement. In cases of defilement (practised upon any unmarried and unwilling girl of equal or inferior *varṇa*), the cutting off of the hand (of the defiler) is the proper punishment, which turns into one of death-sentence when the girl, so defiled, happens to belong to a superior caste.

D. V. adds that according to Halāyudha, the defilement, spoken of above, is 'by thrusting fingers (into the private parts of the girl)'. The author of the Mit. is of opinion that owing to the punishments, described above, (to be inflicted on the abductor), it follows that the girl, so abducted, should be snatched away from him and given in marriage to another (suitable bridegroom).

[128] An edition of Manusmṛti with the commentaries of both Medhātithi and Kullūka reads °*tulyāṁ*; thereby making no material difference in the sense of the above text and the accompanying comment of Kullūka also contains his interpretation as quoted.

[129] Not found in the accompanying comment of Kullūka but in that of Medhātithi in almost identical words,

PUNISHMENTS FOR UNTRUTHFUL BRIDEGROOM AND GUARDIAN OF THE BRIDE

are incidentally described here

The Matsyapurāṇa says on this topic: He, who hands over a defective girl in marriage (to a person) without informing him beforehand (of her defects), should be punished by the king himself with the imposition of a fine of ninety-six (*paṇas*). He should also punish with the infliction of the fine of the highest amercement that person, who, having shown to the intending bridegroom one girl, actually gives another girl in marriage with him. If a bridegroom, who, having concealed his own defects, takes an unmarried daughter (of any person) as his wife, the girl, though given away in marriage (to him), is to be considered as not so given and (the untruthful bridegroom) is to be fined two hundred (*paṇas*) by the king.

Yāj. (II.146a) says: The person, who declines to give away to a man his daughter, already betrothed (*dattvā*) to him should not only be punished but also be compelled to pay up to the intended bridegroom the expenses, (already incurred by him) with interest (*vyayam dadyācca sodayam*).

D. V. adds: The word *dattvā* means 'having betrothed to be given in marriage' and the word *vyayam* implies 'the money, already spent by the bridegroom in connection with the reception, offered to his own relations and to the relations of the girl'. The father of the girl should pay to the bridegroom all the above amount of money with interest. This procedure of compensation is to be followed in the absence of any cogent reason (justifying the going back on the previous negotiations) as the following text of Yāj. (I.65b) has furnished a special cause of permission for rescinding the negotiations: A girl, already betrothed to a person, may be taken back (annulling the betrothal), in case a bridegroom, superior in merit to the former, turns up.

PUNISHMENT OF A WOMAN FOR DEFILING AN UNMARRIED GIRL.

has been laid down by

Manu (VIII.369-70): One unmarried girl, who defiles (*kuryāt*) another unmarried girl, shall be punished with the fine of two hundred (*paṇas*), shall also have to pay thrice the bride-price (*śulka*) and undergo ten lashes with ropes (*śiphāḥ*). But an elderly (married) woman (*strī*), doing so, shall have her head to be at once shaved and her two fingers cut off and shall be made to mount on an ass.

D. V. adds: According to the commentary on Manu (by Kullūka), the word *Kuryāt* means 'defiles (her) by thrusting fingers (into the private parts

of the latter)' and according to the author of the Mit., it means 'creates sore in those parts'. Nārāyaṇa has assigned the reason of the payment of three times the usual bride-price as the refusal (of prospective bridegrooms) to marry such a defiled girl on suspicion of consummation having already been effected. The word *siphāḥ*, according to the Kalpataru, means 'beating with hanging roots of trees, ropes and similar other things'. The Ratnākara (p. 403) is also of the same opinion. Nārāyaṇa has explained the term as 'the hanging roots of trees'. Another authority has qualified the shaving of the head (of the defiling woman) as doing so, after having left ten tufts of hair (on the head). The woman, referred to here, means any female other than an unmarried girl. (Nārāyaṇa) Sarvajña has allotted the punishments of shaving the head, mounting on an ass and cutting off of the two fingers to a Brahmana lady, a Kṣatriya woman and a female, belonging to any other caste (than the above two) respectively.

PUNISHMENT FOR COHABITING WITH UNCHASTE AND SIMILAR OTHER WOMEN

Vyāsa has laid down: The punishment of the despicable person, who commits sexual intercourse with a woman, already enjoyed by many men, is intended (by the earlier jurists) to be like that, prescribed for doing so with a prostitute and not with another man's wife.

Yama has also said in the topic of a *bandhakī* (i.e. an unchaste woman): A person is to pay a fine of five *Kṛṣṇalas*, if he cohabits with another man's wife of the same *varṇa* as his and that of twelve (*paṇas*) with such a woman of a different but lower *varṇa*.

D. V. adds that a *kṛṣṇala* is (a coin of the weight of) three barley grains and the word *dvādaśako* (i.e. twelve) is to be construed with *paṇas*.

Nārada (*strīpuṁsa* VV. 78-79) says: An unchaste non-Brāhmaṇa woman (*Abrāhmaṇī*), a prostitute, a maid-servant and a *niṣkāsinī*, if belonging to castes, lower than one's own, may be approached but not such women of castes, higher than that of the offender. Blemish certainly attaches to the person, cohabiting with these unchaste women, like that, accruing from the performance of sexual intercourse with other men's wives. So though approachable with impunity, these women should not be so done, as they may be in the permanent keeping of other persons (*saparigrahāḥ*).

D. V. adds: The word *A-Brāhmaṇī* means 'a woman of the Kṣatriya and other lower castes'. A maid-servant is one's personal maid-servant and a *niṣkāsinī* means 'an unchaste woman, belonging to one's cognatic relations'. The author of the Mit. is of opinion that these several classes of women may be so treated (by the approaching persons), even if they are not kept

secluded (*anavaruddhāsvapi*). According to Ratnākara (p. 406), by the use of the word *gamyāḥ* (i.e. approachable) the (consequent) punishment only is prohibited but men, doing so, do not enjoy any immunity from the (resulting) sin. The above view (of Ratnākara) is right, as Śaṅkha-likhita (quoted above) have used the word *svadāra-niyamaḥ* (i.e. (all men) should confine their sexual activities within their own wives) and hence transgression of a Śāstraic injunction necessarily entails sin (upon the transgressor). The maxim, previously cited, viz. punishments clear away the sins, is applicable to offences other than such unlawful sexual intercourse.

So Nārada (Cf. *strīpuṁsa*° V. 77) has further said: The punishment of persons, ravishing women, not fit to be so ravished, as laid down (in works on law), is to be inflicted by the king but it is by the performance of penances only that the consequent sins are expiated.

D. V. adds: If such expiation only is to be performed in secret cases of cohabitation with women, not to be so cohabited, owing to the absence of the (king's) punishment in those cases, that clearly proves the generation of sin in such offenders. In fact, we have already said that real cessation of the consequences of sin is effected only by means of expiatory rites, as substitutes for punishments and not by means of punishments only. The several classes of women, enumerated in the above text, fall within the category of females, kept secluded by a person and enjoyed by him. These women, (though not really other men's wives), are called *saparigrahāḥ*, as they are in the permanent keeping of other persons, as the word *para-dāra-vat* (i.e. like other men's wives) has been used here in a general sense.

Yāj. (II.290) has laid down this special punishment: A person, cohabiting with secluded maid-servants and (*ca*) with unchaste women (*bhujiṣyāsu*), though fit to be so cohabited, shall be fined fifty *paṇas*.

D. V. adds: According to Ratnākara (p. 406), the secluded maid-servants, who have been so secluded by their masters, include even those, who belong to castes, lower than the latter. But it has been said in the Mit. that those maid-servants, who have been kept secluded (*avarudhdā*) by their masters in the houses of the latter, have been so done to save them from being enjoyed by other persons with the (false) stipulation that the former have to stay in the masters' houses lest the services they are rendering might be interfered with (by others), that the *bhujiṣyā* type of women is always in the keeping of (*successive*) men and that the insertion of the cumulative conjunction *ca* implies 'the inclusion of such public women as prostitutes and other unchaste women'. If it is argued that the general womanly character of a prostitute follows not from her specific caste as a prostitute but from her belonging to a caste, lower than that of her visiting man and hence she may also be taken as a

woman of even the same caste and that in case she belongs to a caste, higher than that of the man, intercourse with such a woman becomes reprehensible, we say in reply: The caste of the prostitutes, who ply the profession of catering to the desire of men (for enjoying women), is without any definite beginning as is popularly believed and we learn from a statement of the Mārkaṇḍeyapurāṇa that the (female) descendants of the *apsarases* (i.e. demigods), named *pañcacūḍā*-s, are called *veśyās* (i.e. prostitutes), who constitute the fifth caste. So owing to the permanent absence of the solemnisation of the marriage-rites among these women, the men, who cohabit with them, neither incur any invisible sin nor invite any punishment. But according to the author of the Mit. the men, cohabiting with them, though immune from punishments, do not enjoy such immunity from incurring sins, on account of the maxim viz. One should always be attached to one's wife (only) and also on account of the imperative necessity of performing penance (for any sinful act), following from the text viz. penances are to be done for cohabiting with beasts and prostitutes.

The same authority (Cf. Yāj., II.291) further says: One, committing rape upon a maid-servant, is to be fined fifty *paṇas* and if many persons do so upon her, when she is not a consenting party, they should severally be fined twenty-four *paṇas*. Commission of rape upon a prostitute also is known to entail a fine of ten *paṇas* upon the person, doing so.

Nārada says: A *dvija* (i.e. a Brāhmaṇa or a member of either of the three higher castes), cohabiting with a prostitute (without paying her the requisite fee), should be fined equal to the amount to have been paid to her as her fee.

D. V. adds: The author of the Mit. is of opinion that owing to the occurrence of the word *prasahya* (i.e. forcibly) (which is also to be supplied in the just quoted text of Nārada) in the above texts, the punishments are to be inflicted only in cases of forcible cohabitation with (i.e. committing rape upon) maidservants (and prostitutes) and not to be inflicted in cases, where the requisite fees have been paid (by the persons involved). So we find that there is no contradiction of this later prescription with the earlier one (made in respect of intercourse with such women).

Yāj. (II.289b) further lays down: A person, performing sexual intercourse with beasts, is to be fined a hundred *paṇas* and one, doing so with a woman with deficient limbs (*hīnāṅgīṁ caiva*), is to pay the middle amercement as punishment.

D. V. adds: The Ratnākara (p. 407) has interpreted the word *hīnāṅgī* as a woman, bereft of her nose and similar other organs. But the Mit. has

read the phrase as[130] *hīnastriṇāñ* (*ca*) and explained it as 'an unwilling or willing untouchable woman, it cohabited (by any person), will entail upon the latter a fine of the middle amercement.'

PUNISHMENT FOR CARNAL INTERCOURSE WITH MEN AND WOMEN other than in the order of nature, which latter is with women in their private parts (i.e. for unnatural offence of the Indian Penal Code)

The word *ayoni* means 'other organs except the genitals of a woman'. It may be of two kinds, viz. (1) other parts of the bodies of women and men (2) private parts of cows and other animals.

Yāj. (II.293) has laid down the following punishment for the first kind of such offences:

Whoever commits carnal intercourse with women in organs other than their genitals or with men or cohabits with a nun shall have to pay a fine of forty (*catvāriṁśat*) *paṇas*.

D. V. adds: The Mit. has read *caturviṁśatiko* (i.e. twenty four) for *catvāriṁśat*. '(Carnal intercourse) with women in organs other than their genitals' means 'in their month', as this bad practice is prevalent in *Drāviḍa* (i.e. South India) and *Utkala* (i.e. Orissa) and has been recorded in works on Erotics. This nasty practice, performed as it is in the sitting posture (*upaviṣṭa*) (of both the persons), is known to be *aupaviṣṭaka* (derived from the word *upaviṣṭa*).

Vātsyāyana (IX.3) has accordingly said: The performance of sexual act in the mouth of hers (i.e. of the woman) is called *aupaviṣṭaka*.

The following text viz. "This immunity from punishment applies to the cases of those women, who favour their sexual actions to be performed in their *aupaviṣṭaka* (or sitting) fashion", virtually saves prostitutes, maidservants and similar other women from the infliction of punishment for the above unnatural offence. Prohibition to perpetrate this offence with one's legally married wife (*dharmapatnī*) has been laid down by the following text of the *Karma-vipāka-samuccaya*: The wifely status of the legally married and vow-practising wife, if cohabited by her husband in her mouth, becomes dissolved.

Somebody has said that the above prohibition really amounts to the culpability of the husband, so involved and calls for the punishment, prescribed above, when so done, on the authority of the explanation of Vijñāneśvara (the author of the Mit.) on the above text (of Yāj.), expressed in the following words, viz. 'he, who commits carnal intercourse in his own wife's mouth'.

[130] But Yāj. reads it as *hīnāṁ strīṁ gāñca* (i.e. an untouchable woman and a cow).

D. V. adds that the above view is wrong, inasmuch as no question of special prohibition arises because of the general statement (recorded in the above text) viz. cohabiting in the other organs than the genitals of women and also because the prohibition only applies to the actual stage of the commission of this offence on the authority of the text of the Viṣṇupurāṇa, quoted and explained by us in the previous sub-chapter on 'division of punishments'. The phrase viz. 'or cohabits with a man' (*puruṣam vāpi mehataḥ*) implies 'in case a person does so out of excessive lust'.

PUNISHMENT FOR COHABITING WITH COWS AND OTHER ANIMALS

Viṣṇu (V. 40-43) has laid down: The adulterer[131] (*pārajāyī*), cohabiting with a (married) woman of the same *varṇa* as his, should be fined the highest amercement (*tūttamasāhasaṁ daṇḍyaḥ*) and should be fined the middle amercement, if he does so with a (married) woman of a lower caste and with cows (*gogamane ca*) but should be put to death if he commits the above offence with an untouchable (married) woman or with a higher caste (married) woman.

D. V. adds: The word *madhyamam* (i.e. the fine of the middle amercement) is to be supplied after the phrase *gogamaṅe ca* (i.e. in cohabiting with cows also) on the authority of the text of Nārada viz.' the middle amercement in cows' (*madhyamaṁ sāhasaṁ goṣu*). The prescription of the penalty of death in the case of cohabiting with a (married) woman of a caste, higher than the culprit's own, concerns itself with a non-Brāhmaṇa offender owing to the meaningful insertion of the adversative conjunction *tu* (meaning 'but') (in the first statement, relating to cohabitation with a same caste woman).

The Matsyapurāṇa has laid down this special punishment of a Brāhmaṇa offender: The best among human beings (i.e. Brāhmaṇas), cohabiting with cows, should be fined a gold (coin).

D. V. adds: The author of the Ratnākara (p. 407) has said that the prescription of death sentence in the above text of Viṣṇu applies to Śūdras only and that of the middle amercement in the same text holds good in cases, relating to Kṣatriyas and Vaiśyas and that there is thus no conflict between the above two prescriptions. According to D. V., this interpretation is questionable, because a logical deduction may be made from an already cited text and not from one to be cited later on (as the above text of Viṣṇu has not yet been cited by Ratnākara) and also because the above line of inter-

[131] D. V. reads *pārajātīyā*, which is wrong here, in the body of the text, while it gives the correct reading *pārajāyī* as a variant in the footnote.

pretation is contradictory to the very force of words and to the rules of derivation.

The Matsyapurāṇa again says: He, who commits carnal intercourse with animals other than the cow, should be fined a *paṇa* and should be compelled (to eat and drink) such animal's (eatable) grass and (drinkable) water.

D. V. adds that the word *paṇam*, used in the above text, means 'a hundred (*paṇas*)', on the authority of the text of Viṣṇu (V.44) viz. the punishment for cohabiting with a beast is one hundred *Kārṣāpaṇas*. The Kāmadhenu has read the above word *paṇam* as *śatam* (i.e. one hundred).

Here ends the fourth chapter on 'Molestation of other men's wives' of the Daṇḍaviveka, composed by Mahāmahopādhyāya dharmādhīkaraṇīka Śrī Vardhamāna.

CHAPTER V

PUNISHMENTS FOR ABUSE OR DEFAMATION (VĀKPĀRUSYA)

Nārada (vāg VV.1-3) says: Words, embodying insults, imputations (*ākrośa-nyaṅkusaṁgitam*) and irritating utteranances (*pratikūlārtham*) against (other persons') country, caste, family etc., constitute *vāk-pāruṣya* (abuse). These words may also be of three kinds, viz. cruel, obscene and severe and the corresponding punishments have also been laid down in proportion to the gravity of the offences. The insulting utterances (*ākrośa* or *sākṣepa*) are known as cruel, the imputations (*nyaṅku-saṁgitam*) are called obscene and the wise men term as severe those utterances which are made with imprecation.

D. V. adds: The author of the Mit. has explained the insulting utterances (*sākṣepam*) as 'Fie on thee, fool, low-born etc.', the imputations (*nyaṅku*) as such untrue and obscene expressions, not fit to be uttered, as in connection with the cohabitation with one's own sister and similar other relations, and irritating utterances (*pratikūlārtham*) as those severe words, charging (other persons) with grave sins, such as 'You are a drunkard and so on'. Gaṇeś-vara Miśra in his *Vyavahāra-taraṅga* has thus justly described the above three kinds of abusive words: The common characteristic of all these utterances is the generation of mental dejection of the persons against whom they are directed and these utterances are divided into insults against another person's country etc., imputations on him and cruel expressions to cause irritation to that person. These three kinds may be either slight, grave or very grave and consequently entail corresponding punishments upon the utterers. The words viz. cruel etc. are their technical labels and insulting etc. are their descriptions.

But the author of the Mit. has read the expression as *ākrośa-nyaṅku-saṁyutam* instead of °*saṅgitam* and explained *ākrośa* as 'shouting' and *nyaṅku* as 'unspeakable' and interpreted the whole expression as 'such words, which are uttered by shouting and contain unutterable elements and which are, thus, of irritative import' and that 'this is the general definition of *vāk-pāruṣya*'. This interpretation is questionable, as this does not cover all those cases of abuse, which contain no shouts but have threatening or mimicrying elements in them, as Kātyāyana (V.768) has said:

That is said to be harshness of words (i.e. abuse), when a person makes the sound "hum" (before another), coughs (before him) or imitates or utters

(before another) whatever is condemnable according to popular notions. D. V. adds that the following are the examples of the three kinds of insulting utterances: (If one says) against a resident of Gauḍa (i.e. Bengal) that the residents of Gauḍa are quarrelsome, such statement will amount to an insult of one's country (*deśākṣepa*). (If one says) regarding a Brāhmaṇa that Brāhmaṇas are highly avaricious, that statement will be an affront to one's caste (*jātyākṣepa*). (If one says to a member of the *Vaiśvānara* family) that the *Vaiśvānaras* are of cruel habits, that will be an expression of grudge against one's family (*Kulākrośa*).

The expression *nyaṅku-saṁgitam* means 'an expression, containing the mention of the private parts of the body' and such expression, true or false, made against another person simply by exposing the private parts of the utterer himself, also falls into that category.

So Kātyāyana (V.770) has again said: When one reproaches another with the possession of constitutents that are generally termed undesirable (or bad), whether they actually exist in him or not, these are known as *niṣṭhura* (i.e. cruel) words.

The Kalpataru, after having read the expression as *nyaṅga-saṁgitam*, has also explained it as 'obscene' and the Ratnākara (cf. p. 240) has interpreted it as[132] 'an expression, containing the name of the private parts of the body'. But Halāyudha has explained it as 'threatening with the hands and similar other actions'. The author of the Smṛtisāra has read the term and explained it just like the Kalpataru. Vācaspati (Miśra) has, however, explained it as 'containing the mention of the genitals'. But the Kāmadhenu has read the expression in both the above texts (of Nārada and Kātyāyana) as '*vyaṅga-saṅgitam*', where the first word *vyaṅga* means 'lame and other persons, deficient in organs of sense and action'. The same authority (i.e. Kātyāyana) (VV.771-772) has thus defined the obscene (*aślilam*) and severe (*tīvrañca*)[133] varieties of speech:

When (a person), out of anger (towards another person), utters abusive words along with the exhibition of his private parts (*nyaṅgāvapūraṇam*) or casts aspersions against the occupation, country or family of the second person, such expressions are called by the wise men as '*aślila*' (i.e. obscene). The expressions, which impute grave sins or theft of royal articles to other persons or attribute to them loss of their castes, are known as *tīvra* (i.e. severe):

[132] D. V. reads *Nikṛṣṭāṅga-saṅga (o gā?)—vat* and Ratnākara reads *nikṛṣṭāṅga-saṅgāval.*

[133] D. V. wrongly reads *niṣṭhurañca* for *tīvrañca*. The description of the *niṣṭura* variety has already been made by *Kātyāyana* in his earlier text,

D. V. adds that the Kāmadhenu has read *aṅgāvapūraṇam* for *nyaṅgāva-pūraṇam* (in the first of the above two texts of Kātyāyana).

Bṛhaspati (XX.3-4) has laid down: Those, who are conversant with law, have characterised threatening utterance towards another person of minor sins, consisting of the commission of sexual intercourse with that person's sister or mother as the middle kind of *vāk-pāruṣya* (i.e. abuse) and have classed the attribution on another person either of the eating and drinking of uneatables and undrinkables or of committing grave sins in the highest category of such offence, which in these cases cuts to the quick the hearts of other persons and is hence technically known as 'severe'.

D. V. adds: According to Ratnākara (p. 242) the expression viz. '*bhaginī-mātṛsambandham*[134] *upapātaka-saṁśanam*' (i.e. threatening utterance towards another person of minor sins, consisting of the commission of sexual intercourse with that person's sister or mother) means 'I shall cohabit with your sister or mother'. Halāyudha is also of the same opinion. In fact, the word 'mother' (used in the above text) means 'mother's co-wife' (i.e. step-mother). So the expression means 'I shall try to co-habit with your sister or step-mother' and the very utterance of such expressions does not constitute a minor sin.

Kātyāyana (VV.773-774) has further laid down: He, who, out of anger, imputes blemishes (*aguṇān*) (on a worthy person) or attributes good qualities on an unworthy person or otherwise utters false epithets (*anya-saṅgā-niyojī*) (regarding a person), is known as a man of abusive (*vāgduṣṭa*)[135] speech. He, who also proclaims the blemishes of a [136] person (*aduṣṭasyaiva*) who (really) does not possess them for simply defaming him (*doṣa-kāraṇāt*) or imputes the faults of one person on another person, is also called a man of abusive speech. (In other words, both the above classes of persons are guilty of the offence of *vāk-pāruṣya*.)

D. V. adds: The word *guṇini* (i.e. on a worthy person) is to be supplied after the word *aguṇān* (i.e. blemishes) and the word *anya-saṅgā-nīyojī* (i.e. utters false epithets) means 'calls him by a name, implying censure'. The particle *eva* in *aduṣṭasyaiva* means *api*(i.e. also). By the addition of the phrase *doṣa-kāraṇāt* (i.e. for simply defaming him), an exception is provided for such proclamation being made in consideration of one's friends' or relations' (real) faults.

[134] D. V. reads *sambandhaṁ* in the body of the text but °*sambaddham* in the just following comment.

[135] D. V. wrongly reads *vākduṣṭam* here.

[136] D. V. reads *duṣṭasyaiva tu* in both the body of the text and the accompaning comment but Rātnākara (p. 243) reads *aduṣṭasyaiva* in both the places. Kātyāyana also reads like Ratnākara.

Punishments for Brāhmaṇas and members of other castes for abusing one another.

Bṛhaspati (XX.8) has laid down: If the abuser and the abused persons belong to the same caste, the punishment (of the abuser) shall be just as laid down (for such offence) but if the abuser happens to belong to a caste, lower or higher than that of the abused person, he will be punished by twice (the amount of the prescribed punishment) and by a somewhat greater amount respectively. D. V. adds that the abuser's belonging to a caste lower than that of the abused is to be settled in consideration of his conduct, caste etc., as compared with those of the abused.

Yāj. (II.206-7) says: If an abuse is made against inferior persons (*adhameṣu*), the punishment is half (of the prescribed amount) but it shall be doubled, (than the prescribed amount), if directed against other men's wives or superior persons (*uttameṣu*), having regard to the comparative higher or lower *varṇas* and castes (of the abused persons). The punishments will be doubled or trebled in abuses against higher castes (of the abused persons) as the case may be but will be reduced to successive halves in those against lower castes.

D. V. adds: The word *adhameṣu* means 'inferior both in caste and merits'. 'Half' means 'twelve and a half *paṇas*', as the fine of twenty-five *paṇas* has been laid down in general for abusing in the just preceding text (of Yāj.). As no epithet has been prefixed to the word *parastrīṣu* (i.e. other women's wives), the words *utkṛṣṭāsu* (of superior castes) and *prakṛṣṭāsu* (of superior merits) are to be added to it. 'Doubled' means 'increased to fifty *paṇas*'. The word *varṇa* means 'Brāhmaṇas and other *varṇas*', while the word *jāti* means '*Ambaṣṭhas* (i.e. Vaidyas) and other mixed castes of uncondemned unionş'. The last part of the above text means that among the three *varṇas* viz. Brāhmaṇa, Kṣatriya and Vaiśya, a Kṣatriya or a Vaiśya, abusing a Brāhmaṇa, should get twice or thrice respectively of the preseribed punishment. But a Brāhmaṇa, abusing a Kṣatriya, will receive half and a Kṣatriya, doing the same against a Vaiśya, half of half (i.e. one-fourth) of the prescribed punishment.

Manu (VIII.276-7) also says: A (judge), conversant with (law), should thus prescribe the punishments for a Brāhmaṇa and a Kṣatriya (abusing each other of their own castes) : A penalty of the first amercement and that of the middle amercement are to be inflicted on a Brāhmaṇa and a Kṣatriya respectively. A Vaiśya and a Śudra, doing so against their own castes (*svajātim prati*), should also receive the above two kinds of punishments, having due regard to the superior or inferior merits of the abusers. But this apportionment of punishments shall not involve the cutting off of the tongue (*cheda-varjam*) of the accused persons.

D. V. adds the following comments on the above two texts of Manu by his two commentators, viz. Kullūka Bhaṭṭa and Nārāyaṇa.

The former says: The above two texts relate to abuses with the imputation of social degradation (on the abused persons). The addition of the word *svajātim* (in the second text) implies the prohibition (recorded in the latter portion of the above text) of the mutilation of the tongue for the Vaiśya offender only but such mutilation is to be resorted to in such offences having been committed against a Brāhmaṇa and a Kṣatriya. So according to D. V. the word *cheda-varjam* is to be construed with a Vaiśya and a Śūdra only.

The latter says: On the (last) two castes (i.e. Vaiśya and Śūdra castes), abusing members of their own castes, the punishments, as prescribed for them but without the mutilation of the tongue, shall have to be inflicted, from which it necessarily follows that such offenders against the Brāhmaṇa and Kṣatriya castes shall not enjoy immunity from the above punishment of mutilation of the tongue.

In continuation of his previous statement that eight *purāṇa* coins are to be charged as fine from a member of an inferior *varṇa* for shouting against or abusing or otherwise debasing a member of a superior *varṇa*, Hārīta has made the following further statement:

In case of shouting by the use of false words or striking with the feet, the mutilation of the offending organ or fine of five hundred (*paṇas*) (shall be the proper punishment) but if a member of a superior *varṇa* does so in relation to one of an inferior *varṇa*, only one quarter of the above punishment is to be inflicted, or the former, being a member of a superior *varṇa* and hence the master of the inferior *varṇa*, shall be let scot-free, and a Brāhmaṇa is the most powerful (and privileged) of the superior *varṇas*.

D. V. adds the following lengthy note: According to the Ratnākara (pp. 249 and 251) "the word *purāṇa* here means [137] thirty-two silver *Kṛṣṇala* (coins)' and shouting by the use of false words is nothing but abusing. The (offending) organ, referred to here, is the tongue, which is to be cut off when a member of an inferior *varṇa* uses abusive false words against a member of a superior[138] *varṇa* or such offender may only be fined five hundred[139] (*paṇas*). But a member of a superior *varṇa*, doing so against one of an inferior *varṇa*,

[137] D. V. wrongly reads *dvāviṁśat°*, which may either be *dvā-viṁśati* (i.e. twenty-two) or *dvā-triṁśat* (i.e. thirty-two). Ratnākara (p. 249) has read the latter in the body of the text and added the former as a variant in the foot-note.

[138] D. V. misreads *ukṛṣṭavarṇam* for *ut-kṛṣṭavarṇam*

[139] Ratnākara (p. 251) reads *pañcāśatam* (i.e. fifty) both in the text of Hārīta and its accompanying comment.

is to have only one quarter of this pecuniary punishment inflicted upon him. (Hārīta) then lays down the following alternative prescription (in the form of immunity from any punishment whatsoever for the latter class of offenders), prefacing his prescription with the words *na vā kiñcit* (or not so at all), "because of their being members of the first *varṇa* and also because the Vaiśyas[140] and members of other *varṇas* are also superior to Śūdras.[141]"

In fact, the word *abhiśaṁsana* (used in the above text of Hārīta) means 'abusive shouting', which, if made falsely and hence harshly, entails the punishment of the mutilation of the tongue and if not so (i.e. if made on justifiable grounds), it necessitates the infliction of the fine of five hundred *paṇas*. If such abuse is uttered by a member of a particular *varṇa* against one of a different *varṇa*, the alternative lesser punishment by way of fine only shall not be inflicted upon the offender, as is the rule for the cases where both the offender and the offended persons belong to the same *varṇa*. In cases where such persons not only belong to the same *varṇa* but also the abusive words are based upon facts, the punishment of the fine of eight *purāṇas*[142] only is to be inflicted. Alternatively, the words *pāda-taḍane*[143] (striking with the feet) and *anṛtābhiśaṁsane* having been used together, the appropriate punishment for striking a person with feet is the mutilation of the offending foot (or feet) and that of false abuses is the fine of five hundred (*paṇas*). Moreover, though the import of the latter statement in the above text, beginning with the clause viz. *na vā kiñcit* (i.e. or nothing in the shape of punishment), is not fit to be narrowed down owing to the whole statement having been made in continuation of the punishment of the three higher *varṇas* and also because of the existence of the common antecedents, yet this latter statement is to be construed in relation to Brāhmaṇa offenders only, as the very concluding portion of the above entire text contains the clause viz. *īśānatamo hi brāhmaṇah* (i.e. the Brāhmaṇa is the overlord of all human beings). Just like in relation with the following verb *upadadhāti* (i.e. dresses with) in a Vedic mantra, which calls for the supply of the word *añjanadravya* (i.e. an anointing substance) before it in accordance with the general rule of construction, the addition of the following sentence viz. *tejo vai ghṛtam* (i.e. clarified butter is effulgence) just after the above verb, requires the dressing to be made with clarified butter only, it should not be argued that the above clause viz. *īśānatamo hi brāhmaṇaḥ* (i.e. a Brāhmaṇa is the overlord of all men) is a similar completing statement of the word

140 D. V. reads *brāhmaṇādīnām* (i.e. of the Brāhmaṇas).
141 D. V. misreads *kṣudrā°* for *śūdrā°*.
142 This latter punishment is in conflict with the former one of five hundred *paṇas*.
143 D. V. misreads *pāda-cchedane* for *pāda-tāḍane*.

svāmitvāt (i.e. by reason of his being a master of the inferior *varṇas*) as the superlative suffix *tama*, which has been added to the adjective *īśāna*, comes into conflict with the above view, rendering the very theory of the completion of a previous statement by adding explanatory matter (*anuvādamātrasya*) useless (and hence superfluous). Moreover,[144] just like in the following text viz. "(One) should throw sesamum seeds in that place and bind a she-goat nearby, inasmuch as a *śrāddha*, vitiated by the depredations of demons, becomes purified by sesamum seeds and by a goat", the latter statement, expressed in the word *ajena* (i.e. by a goat), has been added to secure the desired result in a place, devoid of goats, there is also some purpose to be served here and so the immediately preceding *varṇa* is, by reason of its superiority, the master of the immediately succeeding one and a Brāhmaṇa, being the master of all those masters, is the highest master. So he (i.e. a Brāhmaṇa) only enjoys complete immunity from punishment and a Vaiśya and a Kṣatriya shall have to receive some amount of punishment in proportion to the degree of their mastership (over the Śūdra). This is the real import of the latter portion of Hārīta's text. But this immunity from punishment does[145] not hold good in the case of a Śūdra, devoid of merits, on the authority of the occurrence of the epithet *guṇahīnasya* (i.e. devoid of merits) (in relation to a Śūdra) in a text of Bṛhaspati, to be quoted a little below. Owing to the prescription of punishments in all other cases, the word Brāhmaṇa (used in the above text of Hārīta) does not also mean an ordinary member of the *varṇa*, following agricultural and other occupations but a meritorious one, (having a good way of life), as such a Brāhmaṇa only is fit for being the overlord (of all human beings). So in view of our having allotted a special class of persons for the enjoyment of the alternative immunity from punishments, as laid down in the above text with the words *na vā* (or not), the eight blemishes, naturally vitiating an alternative prescription (*vikalpa*), have been dispensed with in our opinion.

Manu (VIII.269) and Nārāda (*vāg.* V.17) have laid down: Members of the twice-born classes (*dvijātīnām*), using ordinary abusive words (*vyatikrame*) towards men of their respective own *varṇas*, shall be fined twelve *paṇas* but this punishment shall be doubled in cases where such abusive words are utterly inexpressible (in the public).

D. V. adds: The word *dvijāti* has been used here in the wider sense (i.e. in the sense of the three higher varṇas and not in the narrower sense of a Brāhmaṇa only), according to Ratnākara (p. 247). The word *vyatikrama* means *vāk-pāruṣya* (i.e. abuse) and the phrase *avacanīyo vādah* means 'utter-

[144] D. V. wrongly adds *na ca* (moveover, not) before this statement.

[145] D. V. misreads *sa* (meaning 'that') for *na* (meaning 'no', 'not').

ance of words, not fit to be uttered' (of. Ratnākara, loc. cit.). Nārāyaṇa has interpreted the above phrase as "the utterance only (and not commission of the offence involved) of such statements as 'you cohabit with your sister' and similar other expressions."

Kātyāyana (V. 775) and Uśanas have also said: If a person says, "What I have said (in the abuse) was said out of ignorance, carelessness, excessive delight or affection, I shall not[146] again say so," he should be meted out half of the punishment (prescribed in such cases).

D. V. adds that according to Ratnākara (p. 244), this refers to such abuses only as are (comparatively trivial and) avoidable (and not highly reprehensible).

PUNISHMENTS FOR BRĀHMAṆAS AND MEMBERS OF OTHER CASTES FOR ABUSING MEMBERS OF CASTES OTHER THAN THEIR OWN are now being stated in due order

Bṛhaspati (XX.12-13) has thus laid down the punishments of Brāhmaṇas in these cases: A Brāhmaṇa, abusing a Kṣatriya, is to be fined half of one hundred (i.e. fifty *paṇas*) and should be fined half of fifty (i.e. twenty-five *paṇas*) and twelve and a half (*paṇas*) respectively when doing so in respect of a Vaiśya and a Śūdra. The punishment (by the imposition of the above fine) is for (the commission of the above offence in relation to) an innocent and good (i.e. meritorious) Śūdra but the Brāhmaṇa abuser of a Śūdra, devoid of merits, is not to be held guilty.

Śaṅkha-likhita have thus laid down the corresponding punishments for Kṣatriyas: A Kṣatriya, abusing a Brāhmaṇa, a Vaiśya and a Śūdra, is to be fined one hundred, fifty and twenty-five (*paṇas*) respectively.

Bṛhaspati (XX.14a and 15) has prescribed the punishments for Vaiśyas in such cases in the following words: A Vaiśya, hurling abuses on a Kṣatriya, shall be fined one hundred (*paṇas*) and a Kṣatriya, convicted of the same offence against a Śūdra, shall be awarded a fine of twenty-five (*paṇas*), which punishment shall be doubled in case a Vaiśya commits the same offence against a Śūdra, as it has been laid down by persons, conversant with law. The punishments for members of other castes for abusing a Brāhmaṇa, as laid down by Manu, will described (by us) a little below.

Bṛhaspati (XX.16) has prescribed the following penalty for Śūdras: A Śūdra abusing a Vaiśya, a Kṣatriya and a Brāhmaṇa, shall be fined the first, the middle and the highest amercements respectively.

D. V. adds that according to Ratnākara (p. 250) the above three kinds of amercements are 250, 500 and 1000 (*paṇas*) respectively.

[146] D. V., though reading correctly the words *nāham evam* as a variant in the footnotes, misreads the above words as *āha naivam* in the body of the text,

Manu (VIII.267) says on this topic: A Kṣatriya, abusing (*ākruśya*) a Brāhmaṇa, shall receive the pecuniary punishment of one hundred (*paṇas*) and a Vaiśya, doing the same, that of one and a half hundred (i.e. one hundred and fifty) or two[147] hundred (*paṇas*). But a Śūdra, convicted of such offence, shall be put to death. D. V. adds the following quotation from and criticism of the interpretation of Ratnākara (pp. 248-9) on this text:

The Pārijātā has supplied the phrase *madhyamena pāruṣyeṇa* (i.e. with the middle kind of abuse) before the verb *ākruśya* of the above text and according to Kullūka Bhaṭṭa the punishment of death, prescribed here, is in the form of torture, which, according to Ratnākara (p. 249) is the[148] mutilation of the tongue and similar other organs. The Ratnākara (p. 249) has also added that the above alternative punishments for a Vaiśya are to be inflicted in consideration of the gravity of the *abuse*. As we have seen just above[149] in the last text of Bṛhaspati, beginning with the word *Vaiśyam*, D.V. continues that a *Ś*ūdra committing the first kind of abuse, is awarded only punishment in the form of the first amercement, so the present interpretation of Ratnākara (borrowed from the Pārijāta) of the infliction (on a Kṣatriya, for abusing a Brāhmaṇa) of the (punishment, appropriate to) the middle kind of abuse, is questionable, as in this latter case the punishment should necessarily be lighter than the first amercement (and not higher than that). If not so, what would be the proper punishment for a Śūdra, committing the highest kind of abuse? Certainly not the mutilation of his tongue, which punishment has been prescribed by the Ratnākara itself for the middle kind of abuse. It should not also be any other punishment, as no such penalty has been specifically laid down here. As the author of the Ratnākara (p. 251) himself has explained the clause viz. *anṛtābhisaṁśaṃe tadaṅgacchedaḥ*, occurring in the afore-cited text of Hārīta, as 'the mutilation of the tongue is the punishment for severe abuses', so a similar punishment is appropriate for the highest (i.e. harshest) abuse, hurled upon a Brāhmana.

Manu (VIII.270-1) and Nārada (*vāg*. VV.22-23) have also said: If a member of the once-born caste (i.e. a Śūdra) abuses a member of the twice-born castes (i.e. the three higher castes, who are *dvijas*, i.e. twice-born) with the severest words, he should have his tongue mutilated,[150] as the former has sprung out of the basest portion (of the Creator's body). If such a (low-born) person calls them (i.e. the high-born persons) by their names and

[147] D. V. misreads *dvevā* (i.e. or two) as *tveva*.

[148] D. V. misreads *jihvācchedādyātmakam* as *jihvācchedyātmakam*.

[149] D. V. misreads *anantaroktam* as *antaroktam*.

[150] D. V. reads *bhedam* for *chedam* (read by Manu) here,

castes out of sheer malice, he should then have a burning iron rod, ten-finger -long, thrust[151] into his mouth.

D. V. adds: The once-born caste (*ekajātiḥ*) means 'a Śūdra', as he has got no sacrament of the investiture with the sacred thread (*upanayana*) performed on him. The word *dāruṇayā* twith the severest (words)] means 'with heart-rending words, expressive of the degraded status etc. (of the person abused)'. The phrase 'sprung out of the basest portion (*jaghanya-prabhava*)' means 'as the Śruti has said that he has been born of the legs (of the Creator).' Accordingly, the members of the mixed castes, committing the same offence against those of the twice-born classes, should receive the same punishment, as the former have also been born of the baser portions (of the Creator's body).(Cf. Ratnākara, p. 252) (Nārāyaṇa) Sarvajña has, however, explained the word '*ekajātiḥ* as 'born of the basest caste, i.e. an untouchable'. The word *atidroha*[152] (i.e. malice) has been explained in the Ratnākara (p. 252) as *atiśayadroha* (i.e. excessive enmity). But (Nārāyaṇa) Sarvajña, having also read the above word as[153] '*ati-droheṇa*', has explained it as 'out of excessive hostility, i.e. out of the desire of abusing, due to vanity'. Kullūka has said that a burning iron rod is to be thrust into the mouth (of the accused).

Manu (VIII.273) again says: He, who speaks falsely (*vitathena*) about (i.e. distorts the description of) the learning, the country (of residence), the caste, the actions (*Karma*) and the limbs of the body (*śārīram*) of another person, out of vanity (*darpāt*), shall have to pay the fine of two hundred (*paṇas*).

D. V. adds: According to the Ratnākara (p. 253), the actions (*karma*) consist of penances and the word *śārīram* means 'limbs of the body'. The word *darpa* is nothing but 'casting aspersions on another person, due to a firm conviction[154] of one's own merits'. The word *vitathena* means 'falsely' and the third case-ending, affixed to it, is by virtue of the grammatical rule viz. *prakṛtyādibhya upasaṁkhyānam* (i.e. the third case-ending is also added to words such as *prakṛti*). So, where anyone expresses untrue statements, out of vanity, about the learning, country, caste, performance of penance and bodily limbs (of another person), the former should be fined two hundred (*paṇas*). The false statements about all the above things (relating to a person) may be thus:

[151] D. V. reads *vidheyoṣ yamayaḥ* for *nikṣepyoṣ yomayaḥ*, read by Manu and given by D. V. as a variant in the footnotes.

[152] Ratnākara (pp. 251-2), though reading thus in the body of the text and comment, gives the variant *abhidroha* for both the readings in the footnotes.

[153] But D. V. has read it as *atheti paṭhitvā*, which seems to have been *atīti°* (=*ati*+*iti*).

[154] D. V. misreads *dārḍhyena* as *dārḍhena*.

"This person has not read the Vedas", "The country of residence of this person is not the *Āryāvarta*", "This person is not a Brāhmaṇa", "This man has not performed penances" and "This man is not a person with a good skin.[155]" But according to Kullūka Bhaṭṭa, the words *śārīram* and *karma* are in apposition and mean together "(This man has not) gone through[156] the rite of *upanayana* (i.e. investiture with the sacred thread), which is a sacrament (*Saṁskāra*), performed on the body". Nārāyaṇa, however, has explained the above two words as 'carrying a load etc.' and added that a member of the twice-born classes only, while making such false statements, is to be punished as stated above and not a Śūdra, who deserves the punishment of death. This latter portion of Nārāyaṇa's interpretation is justifiable on account of the various texts cited above. But the punishment of death, laid down by Nārāyaṇa, is to be narrowed down to the mutilation of the tongue. So the opinion of Kullūka Bhaṭṭa that this text (of Manu) relates to abusing between the members of the same castes is also acceptable.

SPECIFIC PUNISHMENTS FOR SPECIFIC OFFENCES[157] OF THIS (VĀK-) PĀRUṢYA (i.e. ABUSE) CATEGORY

Vyāsa has said on this topic: The utterers of statements, attributing ordinary sins, minor sins and grave sins (to other persons), shall be punished with the first, middle and highest amercements respectively.

Yāj. (II.210) also says: A person, casting aspersions on another person, charging him with degrading sins (*patanīya-kṛtākṣepe*) and with minor sins, is to be fined the middle and the first amercements respectively.

D. V. adds that the phrase *patanīya-kṛtākṣepe* means 'charging him with *Brāhmaṇa*-murder and similar other (grave) sins, causing degradation of a person', and that the above text seems to be concerning the highly meritorious persons, accused of doing so.

Viṣṇu (V.29-32) lays down: The highest amercement is the punishment (for a person) for charging another person with degrading sins (*patanīyākṣepe*) and the middle amercement for doing so with minor sins. (The highest), (the middle) and the first amercements are to be inflicted on persons casting aspersions on the aged masters of the Vedas (*traividya*), on the several castes and guilds (of merchants) and on the village and the country (of residence of other persons) respectively.

[155] D. V. reads *nāyaṁ duścarmā* but Ratnākara reads *nāyam aduścarmā*, which is the correct reading.

[156] D. V. reads *taditi* but Kullūka reads the portion as *kṛtam iti*.

[157] D. V. reads *teṣu teṣu pāruṣya-viśeṣe* for *viśeṣeṣu*.

D. V. adds that the words *uttama-sāhasam* (i.e. the highest amercement) and *madhyamam* [i.e. the middle (amercement)] are to be supplied after the phrases viz. *traividya-vṛddhānām* and *jāti-pūgānām* respectively.

Yāj. (II.211) also says (in support of our above interpretation): The highest amercement is (the punishment) for abusing the masters of *traividya* (i.e. the Vedas), the king (*nṛpa*) and gods, the middle amercement for doing so against the guilds of several castes and the first amercement for such offence against the village and the country.

D. V. adds: The word *traividya* means 'a person, conversant with the three (pre-eminent) Vedas such as Ṛgveda, Yajur° and Sāma°' and the word *nṛpa* means 'a ruler of subjects, i.e. a king'. The phrase *jāti-pūga* means 'a collection (*pūga*) (i.e. a guild) of the Brāhmaṇas, the duly installed (Kṣatriyas) and similar other castes (*jāti*)'. Some authority has suggested the supply of the phrase *upapātaka-yukta* (i.e. concerning minor sins) after the words *grāma-deśayoḥ prathamaḥ* (i.e. the first amercement in cases of reviling a person's village of country), on account of the fact that those words just follow the words *madhyamo jāti-pūgānām*, the offences regarding which (i.e. the collection of the guild of the Brāhmaṇas etc.) have been made punishable as minor sins, which alone entail the fine of the middle amercement upon the offender. This view is wrong, inasmuch as the extenuation of punishments has been made only in consideration of the comparatively less criminality of the person to be charged or not to be charged with a particular offence, the criminality in each case having been determined from other Smṛti texts, as Bṛhaspati (XX.17 and 19) has said: One, who casts aspersions against another person's country (or village), shall be fined twelve and a half *paṇas* and one, (falsely) connecting another with the commission of a sin, out of sheer vanity, shall be punished with the first amercement. I (i. e. Bṛhaspati) have laid down these punishments for those classes of offenders, which should be meted out by the wise men just as prescribed or may be extenuated or aggravated (according to the circumstances of each case).

Nārada (*Vāg.* V.19) has also said on this point: One should not impute with any sin either a person, who has undergone expiatory rites in conformity with the *Śāstras* or one, who has already been punished by the king. A sinful person, acting in contravention of the above rule, deserves punishment.

Yāj (II.204) has laid down the following punishment for the above imputations: One, who casts aspersions against persons, deficient in limbs or organs of sense or against diseased persons by true or false statements or improper praises, shall be fined twelve and a half *paṇas*.

D. V. adds: The word *rogiṇaḥ* (i.e. diseased persons) means 'lepers and similar other persons'. A true statement may be such as 'calling a blind man blind' and a false statement is 'attributing deficiency in any limb or organ of sense to one of perfect limbs or undestroyed organs'. An improper praise means 'calling a blind man as one with perfect vision'. All these statements are concerning the same caste of the imputer and the person imputed against, as this view is deduced from the following text of Bṛhaspati (XX.5): Twelve and a half *paṇas* have been laid down in works on law as the punishment for abuse between members of the same caste, possessing similar merits.

Viṣṇu (V.27) says: A sooth-sayer of persons, deficient in one eye and lame men, shall also be punished with the fine of a *kārṣāpaṇa*.

D. V. adds that the word *Kārṣāpaṇa* here means a *paṇa* and that the prescription of the above punishment is to be construed as concerning poor men of the same castes and equal merits, to avoid inconsistency (with the text of Bṛhaspati, quoted just above).

Yāj. (II.289) has further said: A person, accusing a woman (*strī*) (of blemishes), shall have to pay (the fine of) one hundred (*paṇas*), which will be doubled if the accusation is a false one.

D. V. adds: The word *strī* here means a *kanyā* (i.e. an unmarried girl). So if a person accuses an unmarried girl by declaring in public that the girl has been suffering from such chronic and disgusting diseases as epilepsy and phthisis or has already been deflowered, and by divulging similar blemishes, is to be fined a hundred (*paṇas*). But when a person does so by falsely attributing to her non-existent faults, he is to be fined two hundred (*paṇas*). But when one speaks out the really existing faults of a girl, just about to be given away in marriage, such an accuser is to be considered not all guilty, according to a text of Nārada, to be quoted below.

The same authority (i.e. Yāj. II.205) further says: One, who curses another man by saying to him, 'I have cohabited with your sister or mother', shall be punished by the king with the fine of twenty-five (*paṇas*).

D. V. adds: According to the Mit., by the use of the word 'sister', cohabiting with (that man's) wife is also implied. But the Vivāda-cintāmaṇi (of Vācaspati Miśra) (cf. p. 110) has read the first line of the above text as '*Abhigantās si bhaginīṁ mātaraṁ*[157a] *yan mameti hi*' (i.e. you have cohabited with my sister or mother).

Yāj. (II.208-9) further says: If a person orally threatens another person that he would break his arms, neck, eyes or thighs, the former shall be fined one hundred (*paṇas*) but the fine will be reduced to its half (i.e. to fifty

[157a] V. C. reads *yamayediha* for *yan mameti hi*.

paṇas), if the threatening is concerning the legs, ears, nose, hands and similar other organs. If the threatener is really unable to translate into action (what he says by way of threatening another person), he is to be fined ten *paṇas* only (in both the above kinds of uttering threats) but (the above two kinds of fines viz. one hundred and fifty paṇas are to be realised and) a surety secured from a threatener, who is really able to put into effect his above threats, for the safety of the person, threatened by him.

D. V. adds: According to the Ratnākara (p. 247) and other authorities, by the use of the phrase viz. *bāhu . . . sakthi-vināśe* (i.e. breaking of the arms . . . thighs) the major limbs are implied, while by the use of the phrase beginning with *pāda* (i.e. the legs), the minor limbs are taken into account. These punishments are to be inflicted when the parties belong to the same castes. (cf. Ratnākara, p. 247).

Manu (VIII.275) has said: A person, abusing (*ākṣārayan*) his own parents, wife, brother, son or teacher and one, not allowing passage for one's teacher or superior, are to be fined one hundred (*paṇas*).

D. V. adds: According to the Ratnākara (p. 248), the word *ākṣārayan* in the above text measns 'committing an offence of the category of *vāk-pāruṣya*' but according to Halāyudha, it implies 'charging him falsely with a curse'. Nārāyaṇa has, however, explained the term as 'abusing (him or her) with condemnable cohabitation' and thus illustrated it that 'ulterances, such as abusing one's own wife, mother etc. by telling them that their mothers are unchaste women, come within this category'. Kullūka Bhaṭṭa has also said that as the words *ākṣārita*, *kṣārita* and *abhiśasta* have been classed as synonyms in the *Abhidhāna-koṣa* (a Sankrit dictionary of synonyms), so the word *ākṣārayan* means 'charging a person with minor sins and similar other lapses' and similar punishment (constituting the fine of one hundred *paṇas*) (is to be inflicted on the offender) for thus cursing[158] his mother, brother and similar other relations. But the author of the Mit. has expressed the opinion that the above offence relates to innocent mother and similar other respectable relations and to guilty wife and similar other dear relations. Medhātithi has, however, explained the term *ākṣāraṇa* as 'dissension' and added that the above prescription relates to persons, causing dissession among their own mothers and other relations. But the *Dharmakoṣa*, having read the word *ākṣārayan* as *ākrośayan*, explained the verbal noun *ākrośana* as 'calling such persons with words of censure'.

Bṛhaspati (XX.9a) has said: One, who abuses one's own sister and similar other relations, shall have to pay the fine of fifty (*paṇas*).

[158] D. V. reads °*śāpanena* for *śāpena*, read in Kullūka's com.

In the topic of abusing the judge and in continuation of the word *Krośataḥ* (i.e. shouting against) Śaṅkha-likhita have laid down:

(For abusing) the judges, teachers (and superiors) and Brāhmaṇas generally, the proper punishments are reproof, harassment, besmearing[159] (the body of the culprit) with cowdung, making him mount on an ass[160] or any other vanity-curbing punishment.

D. V. adds that all these alternative punishments are to be inflicted in consideration of the gravity of the offence.

The following half-verse of Manu (IX.232, 2nd and 4th feet only) is also to the same effect:(The king) should put to death the fault-finders (*dūṣakān*) of the ministers (*prakṛtīnāñca*) and the associates of the enemies (of the state).

D. V. adds: According to the Ratnākara (p. 369), the word *prakṛtīnām* means 'of the ministers' and the word *dūṣakān* means 'those, who falsely find out faults (of the ministers)'. But Kullūka in his commentary on Manu has explained the latter term as 'dissension-creators'.

Viṣṇu (III.33-34) has laid down: The *svāmi*, the *amātya*, (the friends of the king,) the treasury, the *daṇḍa* (i.e. the criminal law) and the well-wishers (of the state) together constitute *prakṛti*-s and (the king) should put to death all those, who find faults with (or create dissensions among) them.

D. V. adds that the word *svāmī* here means 'the king' and that the Ratnākara (p. 369) has explained the word *amātya* as meaning 'the principal citizen': The punishment of death, prescribed in the previous as well as in the present text, relates to persons, other than Brāhmaṇas, who should, however, be punished with the substitutes of that extreme penalty.

Nārada (*vāg*. V.20 and cf. *vāg*. V.30) has laid down the following punishments (of a Brāhmaṇa) for abusing the king: The following two persons, viz. a Brāhmaṇa and the king are known in this world to be beyond censure and outside the penalty of death, as these two sustain the world. (So a Brāhmaṇa), abusing the king, who has not deviated from his own path (*vartmani sve vyavasthitam*) (i.e. proper administration of the subjects), becomes purified (i.e. absolved from his guilt) by the mutilation of his tongue or by the forfeiture of his entire property.

D. V. adds: The phrase viz. *vartmani sve vyavasthitam* means 'in the absence of such faults of the king as dereliction of his duties of looking over (the welfare of) his subjects, punishing the innocent and similar other lapses. The immunity of the judges, while discharging their duties (and incidentally casting aspersions against the king), has already been shown by us in the (first) chapter on (the theory and practice of) punishments.

[159] D. V. misreads *gomayāpralepanam* for *gomaya-pralepanam*.

[160] D. V. reads *kharārohaṇam* for *kharāropaṇam* read in Śaṅkha-likhita.

Yāj. (II.302) has laid down: (The king) should cut off the tongue of the person and banish him (from the territory), who indulges in speaking against the king (*aniṣṭa-pravaktāram*), abusing him (*tasaivākrośakam*) and divulging his state secrets (*tan-mantrasya ca bhettāram*).

D. V. adds: The Mit. has read *ākrośinam* for *ākrośakam* in the above text and explained the entire text as follows: The word *aniṣṭam* means 'praises etc. of (the king's) enemies' and *pravaktāram* means 'indulging in always speaking,' while the word *ākrośinam* means 'in the habit of blaming the king' and the phrase viz. *mantrasya ca bhettāram* implies 'dinning into the ears of the king's enemy (kings) the secrets of the former king, (formulated by him) for effecting growth of his own state and destruction of the enemy states'. The king should order mutilation of tongue of such (hostile) person and turn him out of his own state.

D. V. further adds that the previously quoted text of Yāj. (II.211a), laying down the punishment of the highest amercement, refers to lighter abuses of the king only and is thus not contradictory (to this latter statement of the same authority). The following statement of Kātyāyana (V.955b) viz. '(The king) should order the sentence of death for him who speaks evil (*apriyasya ca yo vaktā*) (of the king)', is in relation to non-Brāhmaṇa offenders only. The Ratnākara has explained the above statement as 'those, who are in the habit of speaking things, unpleasant (i.e. injurious) to the king, are to be put to death'. Uśanas has thus laid down in the following text that the cases, where no specific punishments have been prescribed, are to be adjudged in accordance with the respective gravity of the offences, falling within the categories of cruel, obsecne and severe abuses: (The king) should manipulate the *daṇḍa* (i.e. punishment) having regard to the circumstances of the particular cases, where the earlier high-souled ones (i.e. legal authorities) have not laid down in detail the appropriate penalties.

D. V. adds that this principle (of discretion) is also to be followed in all other cases (of the administration of criminal justice).

Nārada says: Where an utterance is made (by a person) of degradation (to befall on another person) on the authority of the Śāstras with the (good intention of) effecting the shunning (by the latter of bad company), the former thereby incurs no fault but if otherwise, he becomes equally guilty as the degraded persons themselves and the punishment for such false utterances is the highest amercement. The king should carefully consider the false statement, if any, made to him and should as a corrective measure order the mutilation of the tongue of persons, who are in the habit of spreading untruths.

D. V. adds: The above punishment of mutilation of the tongue is concern-

ing non-Brahmana offenders only, that for the Brāhmaṇa culprits being the highest amercement (spoken of earlier in the above text).

Hārīta says on this topic: Those persons, who assemble together for (the evil purpose of) falsely slandering others, should have their tongues cut off or should each be fined one thousand (*paṇas*).

Kātyāyana (V.673) has said: He, who can eat in the same plate or in the same row with another, shall be punished, if he refuses to do so without. pointing out the fault (in him that prevents such commensality of taking food together). D. V. adds that though the above offence relates to one's action and not to *vāk-pāruṣya* proper, yet, owing to the existence of the rule of prohibition (of interdining in the same plate or in the same row by persons of different ages and castes) and also due to the similar culpability of such (unpardonable) lapse, the above text has been quoted here.

Bṛhaspati (cf. XXI.19) has laid down: A person, if shouting, having been shouted against (by another person with abuses, hurled upon him), does not thereby become guilty (of any offence whatsoever).

Nārada says: When an abuse has been uttered (by a person against another) out of anger, generated between two persons, the latter is respected (*mānyate*) (if he) forgives (*kṣamate*) and does not indulge in counter-abusing the abuser but if he makes a counter-abuse (*ativartate*), he becomes guilty.

D. V. adds: The author of the Ratnākara (p. 273) has explained the words *mānyate* as 'is respected, i.e. is not made punishable', *kṣamate* (i.e. forgives) as 'does not indulge in counter-abusing' and *ativartate* as 'spreads the offence of (*vāk-*) *pāruṣya*' i.e. 'makes a counter-abuse'. So, according to our opinion, the innocence of the abused person in shouting against the abuser, relates to the absence of repetition of the abuse, which, if repeated, shall make the counter-abuser certainly liable to punishment. In fact, the plain meaning of the above text is that he, who, being unable to bear the insult, simply shouts against (the abuser, who has hurled the insult upon him,) is not liable to punishment.

The Ratnākara (p. 275) has further said that the consideration of innocence in the absence of the repetition of the above offence, as laid down in (the above text of) Bṛhaspati, should be construed in relation to the same or lower social status of the abused person but even if such shouting (but not hurling counter-abuse) against a person of a higher social status is made, it shall then be counted as an offence.

Bṛhaspati (XXI.5) lays down: When a person of lower age or inferior social status transgresses (the respect, due to) a person of higher age or superior social status, by abuse etc. the latter, when chastising (*sa eva tāḍayan*) the former, should be sought after (for punishment) by the king.

D. V. adds: The punishment (for such abuses) falls into two definite categories, first, appropriateness of the infliction of punishment (on the abusing person by the king himself) and secondly, taking the law into one's own hands from those of the king (and making assaults, which are improper,) by the abused person, as is evident from the use of the clause *sa eva tāḍayan* (in the above text). This latter method (of taking the law into one's own hands) is permissible only in the cases, cited in the just following text of Nārada and may also be allowed in any other case (not cited in that text), in accordance with the principle of equity.

Nārada (*vag.* VV.11-14) has laid down: Immediate (corporal punishment) (by the abused person) of the following classes of persons for having transgressed the legal prestige (of the former) is the settled law: Untouchables, *paśu*-s, Cāṇḍālas, prostitutes, executioners (and butchers), the elephant-tamers, the outcastes, the slaves and those, who flout the advice of (superiors) and teachers and the wise have declared that such (taking the law into one's own hands) does not turn out to be an offence, amunting to assault. The very person of higher social status, who is flouted by these persons, shall himself administer the (requisite) punishment (on them) and shall not thereby render himself liable to consequent punishment by the king, as these (listed) persons are, as if, the dirt of human society and so their money is also dirty. Consequently the king should, when necessary, put them to physical harassment but should never inflict pecuniary punishments upon them.

D. V. adds the following comments: According to the Ratnākara (p. 275), the untouchables (*śvapāka*) are those, procreated by an *Ugra* in a Kṣatriya woman. According to our opinion, they are persons, born of the union of Kṣatriya males and *Ugra* females, as Manu (X. 19a) says: 'A person, born of a Kṣatriya in an *Ugra* woman, is known as a *śvapāka*'. Devala has, however, said that the members of the twiceborn classes have termed a person, produced by a Kṣatriya man in a Śūdra woman, as an *Ugra*. The word *paśu* (in the above text) means 'an impotent person'. The Mit. has, however, read it as *śaṇḍa* (meaning the same). A Cāṇḍāla is a person, generated by a Śūdra male in a Brāhmaṇa female. The word *badhaka-vṛtti* (i.e. executioners and butchers) means 'one, who lives upon the killing (*badha*) of others (i.e. men and animals)', the pleonastic suffix *kan* having been added to the word *badha* to make it *badhaka*, according to the Ratnākara (p. 275). The Kamadhanu and Kalpataru have read the portion *veśyā-badhaka-vṛttiṣu* as *veśyāsu badha-kartṛṣu*, which is a clearer reading but the Mit. has read it as *vyaṅgeṣu baḍha-kartṛṣu* (i.e. regarding persons, deficient in limbs and executioners and butchers). The slaves refer to those, who have been born in the master's house. The word *ghāta* (i.e. killing)

means 'physical torture or harassment' and the addition of the particle *eva* (just after it) implies that fines should never be imposed (on them). The underlying principle of the last two verses of the above four verses (of Narada), beginning with the words *yam-eva* is:

The persons, affected by the abuses of the untouchables (*śvapāka*) and all the other classes of persons, specified above, should themselves punish them and the king should not take them to task for taking the law into their own hands. But if these former persons do not do so out of prestige or incapacity, then only should the king punish the above latter classes of persons. The king should also harass them but never fine them, as they are the pests of the society and hence are cursed human beings. So their money is also cursed. (of. Ratnākara, p. 276). Further remarks on the above topic are to be sought for in the (next) chapter on *daṇḍa-pāruṣya* (i.e. assault).

Here ends the fifth chapter on *vāk-pāruṣya* in the *Daṇḍaviveka*, composed by Mahāmahopādhyāya-*dharmādhikaraṇika*—Śrī Vardhamāna.

Chapter VI

PUNISHMENTS FOR ASSAULT (DAṆḌA-PĀRUṢYA)

Bṛhaspati (XXI.I) has thus defined it: Striking a person with hands, stones, clubs, ashes, mud, dust and weapons is termed as *daṇḍapāruṣya* (i.e. assault).

D. V. adds that three kinds of assault, viz. by means of ashes and similar things, clubs etc. and weapons respectively, have been spoken of here and these three kinds are successively graver (in point of culpability).

Nārada (vāg. VV.5 and 6a) also lays down: This offence (i.e. assault) is also of three kinds, committed as it may be by the use of lighter, medium and heavier agencies, resulting in raising only, and striking only with them but shedding no blood (of the assaulted person) and doing so (of the above person).

D. V. adds: Here as the beginning, the very commission and the consequent result constitute the three parts of the above crime, so the crime itself has been spoken of as consisting of three kinds viz. light, medium and heavy, which have been said to be successively graver. All these varieties of the above offence are of two kinds, viz. self-made and caused by other (instructed) men. The first variety also is of two kinds, viz. mutually started and started by either of the parties. The assaulter may also be of many types in view of the singularity or plurality (of the assaulting persons) and of the good and other kinds (of those persons). The assault may also be of four kinds in considerations of the movable and immovable character of the thing or living being assaulted and of the biped and quadruped character of the living beings so treated. Moreover, the pecuniary condition of the offenders in such cases is also to be taken into account. All these considerations, applicable to particular cases and justifying the imposition of particular punishments, are to be looked for in the introductory chapter (of this work). (The judge), while punishing the culprits for this offence, must also arrange for the paying back of the part of the booty, if recovered (to the person, whose articles have been stolen), the repairing of the property of the assaulted person, imposition of the double penalty (in some cases) on the assaulter (who has also stolen things of the assaulted person), the payment by the severe assaulter of the medical expenses (of the assaulted person) and similar other connected matters.

Yāj. (II.221) has laid down: Anything, stolen by a person (from another person), after having picked up a quarrel with the latter, should be ordered

to be restored to the owner and twice the value (of the thing stolen) should also be exacted from the assaulter.

Kātyāyana (V.788) also says: Those (offences), for which admonition and harassment of the offenders have been laid down as punishments, should also be decided after having compelled the offenders to restore or repair the property, stolen or damaged (*bhagnam*), (to the real owners) but the poor persons (unable to do so) should be ordered to compensate by their labour.

D. V. adds: The word *bhagnam* (i.e. broken or damaged) means 'houses, (private) roads etc.' The poor culprits should compensate for their offences, relating to property, by serving the aggrieved person.

Manu (VIII.287) has laid down: (Persons, convicted of) having inflicted injuries on the limbs (of another person) or of causing bruises (*vṛuṇa*) to or discharge of blood from (his body), should be ordered (by the king) to pay the necessary expenses[161] (of medicine and diet) or additional fines (along with those expenses).

D. V. adds: The word *vraṇa*, according to Nārāyaṇa, means 'piercing through the flesh (of the body'.) If the inflicter of the above injuries by means of cutting into the body or breaking hands and other limbs of another person, declines to pay the necessary expenses of medicine and diet of the injured person, then the king should not only compel him to pay the above expenses, but also inflict necessary and additional pecuniary punishment upon him. Some MSS. of Manu has read *prāṇa* instead of *vraṇa* in the above text and Nārāyaṇa has explained the former as '*balam*' (i.e. strength).

Kātyāyana (V.787) has also said: While prescribing punishment for the injury effected (and consequent disability to work generated) of the bodily organs, the persons, proficient (in law), should follow the rule of exacting from the offender some amount of money for appeasing the person injured and also such amount as is sufficient for healing his wound (and making his body fit for work).

Viṣṇu (V. 75-76) also says: All those persons, who inflict injuries on the bodies of human beings and domesticated animals, shall have to pay the necessary expenses of healing up the injuries.

D. V. adds: In cases, where an animal (belonging to another person) cannot be healed up even by exacting the above expenses of medicine and diet from the injuring person, the latter shall have to pay either a substitute animal or its price to the owner of the animal.

Yāj. (II.225-6) says on this topic: In cases of hurting, causing flow of

[161] D. V. misreads *samutthāna-vyayam* as *rvsaasvañca vyayam*.

blood and cutting off of the principal and subsidiary organs (*sākhāṅga-cchedane*) of the small animals, such as goats, the corresponding punishments begin from two *paṇas*, being doubled in each succeeding case (*dvipaṇād dviguṇaḥ*). But in cases of castration of the male animals or putting them to death, the fine of the middle[162] amercement, along with the payment of the price of the animal concerned, shall have to be imposed. The punishments in all the above cases, concerning big animals (such as horses), shall be twice of all the above-prescribed punishments.

D. V. adds: The word *śākhā* of the compound word *śākhāṅga-cchedane* means horns and similar other limbs (of the animal's body), from which no other organs sprout up and the word *aṅga* of the above compound means hands and feet (of the animal's body), from which other parts (viz. fingers and toes) sprout up. Halāyudha and Ratnākara (p. 277) have thus explained the above terms.[163]. But the Mit. has read *dvipaṇād dviguṇaḥ* as *dvipaṇaḥ*[164] *prabhṛtiḥ* and has added the following interpretation:

It should not be argued on the basis of the phrase *dvipaṇaḥ prabhṛtiḥ* that two, three, four and five *paṇas* are meant here (as successive punishments). The numbers 'three' etc., even when logically following from the prescription of successively higher punishments, according to the comparative gravity of the offences committed, have never been laid down as the numbers, qualifying the amount of fine (to be paid in coins) as these numbers create cumbrousness. So it is better to suggest the successive even numbers following the above prescribed *dvipaṇaḥ* (i.e. two *paṇas*), i.e. two, four, six and eight *paṇas*.

Viṣṇu (V.77 and 50-54) says: The killers of such animals as an elephant, a horse, a cow and a camel should have one of their legs cut off. A killer of the rural (i.e. domesticated) animals should be fined one hundred *Kārṣāpaṇas* and should also be compelled to pay their price to the owners of those animals. But a destroyer of the forest animals shall be fined fifty *Kārṣāpaṇas* only, while the killer of birds and fish shall be fined ten *Kārṣāpaṇas* and that of insects one *Karṣāpaṇa* only.

D. V. adds: The above punishment applies, according to the Kṛtyasāgara and Smṛtisāra, to those, who do not eke out their living on (the killing of) those animals. But Halāyudha has said that the above punishment shall be

[162] The D. V., though giving the variant '*mṛtyau madhyamaḥ*' as a variant in the footnote (p. 221) and explaining the phrase as '*māraṇe ca madhyamasāhaso daṇḍaḥ*' in the corresponding comment (p. 222), misreads the phrase as '*mṛtyāvadhamo*' in the body of the text (p. 221).

[163] D. V. omits *śoṇitotpāde* in the comment on the above text by Halāyudha and Ratnākara, found in the latter work.

[164] D. V. misreads it as *dviguṇaḥ* etc.

inflicted only upon those killers of insects, fish and other animals, owned by others, as is evident from the mention of the payment of the price to the owners (of those animals) (in the above text).

Kātyāyana says: Persons, charged with the slaughter of animals and birds and of serpents, cats, ichneumons, dogs and boars, should be fined three or twelve *paṇas* (as considered appropriate).

D. V. adds: The punishment of three *paṇas* only applies to the killing of the most insignificant animals and birds and that of twelve *paṇas* to that of good (i.e. useful) animals and birds. The punishment of fifty *paṇas*, laid down in the (previously cited) text of Viṣṇu, is concerning the slaughter of the best (i.e. the most useful) animals and birds on the authority of a text of Manu to be quoted below.

Fathers and similar other superiors, if instigating sons and similar other relations to commit assault (on others), are to be held guilty but not otherwise. This topic will now be discussed.

Nārada (cf. *vāg*. V.32) has laid down: If a son, a dog or a monkey has not been instigated by the father or the owner of those animals to commit a crime (relating to assault), the latter shall not be liable for punishment.

Yāj. (II.300) has said: The owners of toothed and horned animals, who are capable of clearing (the public road of those animals) but do not do so, are to be punished with the first amercement, which shall be doubled in case of cries (*vikruṣṭe*) (of the passers-by).

D. V. adds that the word *vikruṣṭe* means "when (a passer-by) has more than once cried out 'Remove your horned animal' (from the path)."

The same authority (i.e. Yāj. II.298) has further said on this point: A person, riding on his own quadruped or practising so on a quadruped, owned by another person or carrying or practising the carrying of a (large) piece of wood (or a heavy stone) but warning with a shout the pedestrians beforehand, shall not be held guilty.

D. V. adds: The word quadruped (*catuṣpada*) means 'a horse, a bullock etc.'

Manu (VIII.290) says on this point: There are ten exceptions to the culpability of a conveyance (*yāna*) or its driver[165] and its owner but in all other cases, there is definite guilt (on the part of those two classes of persons).

D. V. adds: Though the beasts, drawing a conveyance such as a chariot, are immune from punishment, yet the man, carrying a palanquin, enjoys no such immunity and hence the word '*yāna*' has also been included here, according to Nārāyaṇa.

[165] D. V. misreads *yantuśca* as *jantuśca*.

The same authority (i.e. Manu VIII.291-2) has thus enumerated the ten exceptions: Manu has laid down immunity from punishment of both the puller and the owner in the following ten cases:

When the noose, bound through the nose of the drawing animal (of a chariot), has been torn off, when the yoke (of the chariot) has been broken, when (the chariot) has swerved from the real path due to the unevenness of the ground (*tiryak*), when another chariot from the opposite direction has suddenly arrived (*pratimukhāgate*), when the axle (or central spoke) within a wheel (of the chariot) or a wheel has been broken, when the leather strap, the binding rope around the neck of the animals or the rein has been torn or when the driver (of the chariot) has shoutingly warned the pedestrian, to move away (from the path).

[166]D. V. adds : The word *pratimukhāgate* means, according to Nārāyaṇa 'come by making an about turn'. The compound word *tiryak-pratimukhāgate* means the following according, to Ratnākara (pp. 279-280): Owing to the proceeding in a slanting (*tirjak*) and opposite (*pratimuka*) direction and thereby colliding with another chariot.

The same authority (i.e. Manu VIII.293) further says: Where, owing to the want of experience of the driver, the horses or other drawing animals (of a chariot) deviate from the right path and loss of lives occurs as a result, the owner (of the chariot) should be fined two hundred *paṇas*.

D. V. adds: Here the driver having been appointed by the owner (of the chariot), the latter becomes punishable for his fault in appointing an untrained charioteer. The commentary on Manu[167] (by Kullūka) says that the punishment is here on a par with that laid down by Manu (VIII.296) himself, beginning with the words *manuṣya-māraṇe kṣipram* [by a sudden (but unprovoked) killing of a man].

The same authority (i.e. Manu VIII.294) has said in the following text the immunity from punishment of the owner of a chariot, who has appointed an experienced driver:

If the driver (appointed) is an experienced one, he is then to be punished but when he is not an experienced[168] one, all the persons, who have ascended the chariot, are to be fined one hundred *paṇas* each and neither the owner nor the driver (of the chariot).

[166] Other explanatory matters, reproduced by D. V. from Ratnākara (*loc. cit.*) and included by us in the English rendering of the above two texts of Manu, contain many misreadings.

[167] But Kullūka has made this statement in connection with his comment on the next verse, relating to the punishment of the driver and not to that of the owner.

[168] D. V. misreads *prājake Śnāpte* as *prājako Śnāptaḥ*.

D. V. adds: According to (Kullūka) Bhaṭṭa, the passengers of the chariot but not the driver and the owner[169] become punishable for their fault in boarding a chariot, driven by an inexperienced driver. But according to Nārāyana, all those persons of the chariot, who have been taught by the owner to defend the driver, are to be punished.

The same authority (i.e. Manu VIII.295) further says: But if he (i.e. the driver), having been obstructed in the way by other beasts or (*vā*) by any other chariot, brings about the death of living beings, his punishment is beyond consideration.

D. V. adds: Here the particle *vā* (i.e. or) means non-finality, and hence includes cases of going down slopes, rising upwards, going in a slanting direction etc. According to Ratnākara (p. 281), "when the chariot, owing to the want of experience of the driver, becomes obstructed by an animal or by another chariot and thereby causes the death of any creature, the punishment of the driver is certain in those cases."[170] But Nārāyaṇa, after having prefaced his comments on the above text (of Manu) with the sentence, viz. '(Manu) has laid down (this test) in cases of death, brought about by circumstances beyond one's control', interpreted it as meaning 'the punishment here has been left undecided (*daṇḍo S vicāritaḥ*) (by the sages) i.e. no punishment results (from such happenings)'.

The same authority (i.e. Manu VIII.296) now lays down the particular punishments for the charioteer for having caused the death of particular animals (by rash and negligent driving):

In causing the sudden (and unprovoked) death of a human being, the sin or culpability like that of a thief accrues (to the driver) and in doing so in relation to such big animals as the cow, the elephant, the camel, the horse and similar others, half of the above culpability (attaches to him).

D. V. adds: (Nārayāṇa) Sarvajña has prefaced his comments on this text (of Manu) by saying that (Manu) has thus laid down the punishment for intenttional murder with cudgels and similar other things. But Halāyudha has said that by the insertion of the word '*cauravat*' (i.e. like a thief) the analogy here is with the pecuniary punishment for a high crime and not with the sentence of death, half of which is impossible in view of the phrase, inserted in it viz., 'half of that is to be meted out in cases of (killing) cows and other animals'. The Ratnākara (p. 281) is also of the same opinion. So also is Kullūka Bhaṭṭa, who has explained the text as laying down the highest amercement as that for a thief. But Nārāyaṇa Sarvajña has said that half of the fine, imposed on the theft of a particular animal, is to be

[169] D. V. reads *svāmi-vyatiriktāḥ* (i.e. except the owner).

[170] D. V. contains many misreadings in the above extract.

levied for the (sudden and unprovoked) killing of that animal. This is right, as this punishment is not (in any way) conflicting with that, laid down in the (previous) chapter on murder, where such slaughter of human beings is with the express intention of committing so, whereas here such manslaughter has been brought about through negligence only. In one case, the assault is inflicted (on a person) with the motive of causing his death and in another case, the motive of assault is simply to cause pain in his body and by chance the assaulted person succumbs to the injuries. So it is proper to take into account the relative gravity of both the above criminal actions, committed by the assaulter. Therefore, the question of prescription of particular penances for killing cows and similar other animals, with intention or without intention as the case may be, has arisen. It is for this reason that the (previous) digest-writers have introduced the above text of Manu in the chapter on (*daṇḍa-*) *pāruṣya* (i.e. assault) and not in that on murder. This conclusion is also not in conflict with the text of Bṛhaspati viz. 'death-sentence (should be meted out) in killing', introduced by those (digest-writers) in this chapter (on assault), as that very text is also in connection with intentional murder. The above text (of Bṛhaspati) is to be construed to those very cases where, however, a person, having been exhausted in consequence of various ways (of assault, inflicted upon him), is on the point of death and is still being assaulted with heavy rods or a man dies, due to the thrusting into his person of a dagger and similar other mortal weapons, and thus no inkling of contradiction between the texts (of Manu and Bṛhaspati) is known to exist here. The fact is that the reading *ghātane* (i.e. in cases of killing) in the above text of Bṛhaspati is corrupt, the Kāmadhenu and other authorities having read it as '*pātana* (i.e. *pātane*)'. Moreover, as the punishment for cutting off (another person's) ears and similar other organs is twice the middle amercement, prescribed in the latter portion of the above text for piercing into them, so twice the highest amercement, prescribed in the former portion of the text for breaking bones, is to be inflicted on equitable principle for causing the loss of the bones (of another person) and it is in this latter case that the alternative corporal punishment may also be inflicted. The word *pramāpaṇam*, used in the above text of Bṛhaspati, means 'destruction', which is possible to be effected in bones only, which are also near at hand (in an assault) and so they are likely to be meant here. If it is argued that the word *prapātanam* would have been better here (instead of *pramāpaṇam*), we reply that suchs eparate statement is not fit to be made, just like the statement of Nārada, viz. death of the fingers and the thumb. Here owing to the relevancy of the bones (to an assault), it is easy to explain *ghātana* as *pātana*. So the logical interpretation of the above text is that he, who really causes

loss of another person's bones, should receive the similar loss of his own bones as the punishment. Though there is here some amount of complexity in the method of interpretation, yet there is no fault in it, as such methods are known to have been invented out of consideration for bringing out the sense of a sentence under discussion and also according to principles of equity. The authors, who read the above text as we have done, must also admit the logical principle that a person should receive a punishment, just in keeping with the offence, committed by him. Discerning persons should, therefore, consider these texts, grounded on principles of equity, without any prejudice whatsoever.

Manu (VIII.297-8) again says: Two hundred (*paṇas*) and fifty (*paṇas*) should be the respective punishments for killing small beasts and auspicious animals and birds, while five *māṣas* and one *māṣa* only for killing asses, goats, sheep and similar other animals and dogs and boars respectively.

D. V. adds: The Ratnākara (p. 282) and other authorities have said that the smallness of animals is to be judged by their age as in the case of locusts etc. and by their species as in the case of goats etc. Kullūka Bhāṭṭa has, however, said that in spite of the specific mention of the small animals (in the above text), other animals such as monkeys[171] are to be included (in the above list) and that the small beasts, referred to here, mean young and adoloscent ones only. But Nārāyaṇa has said that the mention of the fine of two hundred (*paṇas*) for (killing) small animals, including beasts and birds etc., is nothing but the highest amercement, which is diminished in proportion to the relative smallness of the animals involved, and belonging to others only but a fine of fifty (*paṇas*) has been prescribed (in the above text) for (killing) ownerless animals. The auspicious beasts are *rnru* and similar other animals. The boars, referred to here along with dogs, are not wild ones. According to the Pārijāta, two(?) *māṣakas* mean 'two silver *Kṛṣṇalas*'. Kullūka Bhaṭṭa has also explained the word *pañcamāṣikaḥ* as 'amounting to five silver *māṣas* and not five gold *māṣas*' as successively lower *māṣas* have been prescribed here. But Nārāyaṇa has interpreted the term as 'of the value of five gold *māṣas*'.

Kātyāyana (V. 792) has said: Manu has laid down that one, killing an animal, should give (to the owner) another animal (of the same type) or its proper price.

D. V. adds: This text is concerning both sorts of killing, viz. that, due to the application of a killing instrument and that, occasioned accidentally by being run over by a chariot. The word *pratirūpam* (i.e. substitute) means 'almost like in it in quality etc.'

[171] D. V. reads *vānarādīnām* but Kullūka has read *vanacarādīnām*.

Manu (VIII.285) also says: The principle, underlying the punishments to be meted out on the destroyers of trees (*vanaspatinām*) (big and small) is that the former should be inflicted in proportion to the utility of the latter.

D. V. adds: The term *vanaspati* here logically includes all useful trees and (so punishments for their destruction should be) according to their relative utility, great or small. (cf. Ratnākara p. 282). Kullūka Bhaṭṭa has said that "the highest and other amercements are to be imposed as fines on (the destroyers of trees), according as the fruits, flowers, leaves etc. (of the trees so destroyed) are considered the best, the medium and ordinarily useful. This view is correct in consideration of the following statement of Viṣṇu (V.55) to be quoted (in full and explained) below (p. 324 of D.V.):

The cutter of a tree, yielding fruits, shall be fined the highest amercement.

Here the punishment is to be inflicted on the person, who himself cuts down ownerless trees, creepers etc. or engages others to do so, as this constitutes transgression of the following such standing injunction of Vaśiṣṭha (XIX.11) and also because wanton destruction (of such trees) is prohibited: "One should not destroy the trees, which yield fruits and flowers etc." This is more so prohibited in view of the advice of the practice of penance, embodied in the following anonymous text:

'One hundred *ṚK* mantras are to be inaudibly muttered for cutting down fruit-yielding trees, creepers and groves and flowering plants.' The punishments for such offences will be described by us in detail in the next chapter on 'Miscelleneous offences'. The only difference between the punishments for committing such offences in relation to such trees etc., belonging to others, and in relation to ownerless ones, is that in the former class of cases either a substitute or the proper price of the tree, so cut down, is to be made over to its owner.

Now, if a person, such as a husband, a father or similar other person, wishing to punish his wife, son and similar other relations, either assaults them himself or has them thrashed by his pupils etc., then he becomes punishable if any excess of beating results from it but not otherwise, as Manu (VIII.299-300) has laid down: When (a person's) wife, son, servant, pupil, and full brother become guilty, they may be thrashed by a rope or by a cluster of creepers on the back of their bodies only but never on their heads. A person, doing otherwise, shall be punished as a thief.

D. V. adds: The word 'wife' with its definite connotation includes within it a 'daughter-in-law' also and similarly the word 'son' means a 'grandson' also. The word 'servant' has been used here in a general sense and hence means 'principal and subsidiary servants and subordinate persons also', as owing to the following interpretation of the Ratnākara (p. 270) of the

text of Āpastamba (II.10.12) viz. "The corrector or master (*sāstā*) should give orders (to his servants to be carried out by them)":

A *śāstā* is one, whom a Śūdra waits upon (i.e. serves).

The word '(full) brother' means 'a younger such brother'. The word *pṛṣṭhataḥ* (i.e. on the back) means 'on parts of the body other than the vital and tender ones' and on the same logic the words '*nottamaṅge*' (i.e. not on the best organ) means 'not on such sensible parts'. The phrase '*caura-kilviṣam*' (the offence as of a thief) means 'the highest penalty, laid down for theft', which should be inflicted upon the above person in cases when the person, so chastised, does not succumb to the injuries but a heavier punishment is to be awarded on the above person on the death of the latter, according to Nārāyaṇa.

Nārada (*abhyupetyā*° V.14) says in continuation of his statement of punishment to be impoosed on a *Brahmacārin* (i.e. a Vedic student): Such a person should not be beaten severely and neither on the head nor on the breast and should be first taken to task and then taken into confidence. This punishment may be inflicted either by the king or by the teacher (of the Vedic student).

The Bhaviṣya-purāṇa also lays down: O the best of the gods ! if a son, a pupil or a wife, after having been chastised, dies (of the effects of the chastisement), the corrector (or master) does not thereby becomes tainted with fault.

D. V. adds: The word 'son' is an example of the persons to be chastised and the chastisement is as described above. Now the special rule for the contest between two persons other than a father and a son is being given below.

Nārada (*vāg.* V.9) says: He, who begins an assault, is invariably guilty and the other person, who makes a counter-assault, is also guilty (to some extent) but the punishment on the former must be heavier.

When it is impossible to ascertain the priority of the mutual assaults of two persons, Kātyāyana has laid down:

Whenever it is difficult to ascertain the priority (*viśeṣa*) of two persons, simultaneously engaged in fighting against each other, both of them should be punished for having committed assaults.

D. V. adds: The word *viśeṣah* means a decision to the effect viz. '(This of the two has first assaulted the other' and similar other propositions (*ityādyākāraḥ*),[172] according to the Ratnākara (p. 273). Though in cases of mutual assaults when the priority of the assaults is not known, such knowledge can be had from the oaths of the complainants, otherwise no suit can be

[172] D. V. misreads *ityākāraḥ* for *ityādyākāraḥ*, forming the last word of the Ratnākara quotation (p. 273) and thus makes the second reference to it untraceable in it.

started, yet when the question of the simultaneity of the two assaults is immaterial like that of the two wrestlers or two sheep and it is also similarly impossible to find out the priority of the assault in an encounter, ensued between the chief opponents of two places, the above text concerns itself with such (doubtful) cases. The above text is simpıy illustrative. Accordingly, even in cases where the beginner of the fight commits a lighter (i.e. milder) assault and the attacked party deals out a heavier (i.e. harsher) blow and both the parties thus become equally guilty, the above principle of the equality of punishment of both shall have to be followed. The addition of the word *ādi* (i.e. 'and similar other propositions') in the above—quoted interpretation of the Ratnākara (p. 273) supports the above view (of ours).

But if the counter-assaulter aggravates the quarrel, he is then to get the heavier punishment, as Nārada (*vāg.* V.10) has said: When in a mutual fight, having been ensued between two persons, either of them, the assaulter or the counter-assaulter, persists in aggravating the fight, he should then have the heavier punishment.

Bṛhaspati (XXI.3) has also echoed the same view as follows: Equal punishments should be inflicted upon both the persons, equally assaulting each other, while the beginner and the persister (i.e. aggravator) deserve higher punishments.

D. V. adds that the last part of the above text means that if, when one person has assaulted another person with hands or ashes and the other person strikes him with a sharp weapon, the latter is then to receive the higher punishment.

Kātyāyana (cf. V.780) has also said: That person, who, having been assaulted by another person, strikes the latter with a fierce (*ābhīṣaṇena*) weapon, shall have the greater punishment.

D. V. adds that the word *ābhīṣaṇena* (*daṇḍena*) means 'by a dagger and similar other weapons'. But Bṛhaspati (cf. XXI.19) has laid down: (cf. Ratnākara, p. 274 and Cf. D. V. p. 215 for part of this text). When a person, having been shouted against, makes a counter shout or having been assaulted, makes a counter-assault (*prati-tāḍayan*) or kills an assailant, he does not in all these cases become guilty.

D. V. adds: The above text, though concerning the commission of the above offence, not involving its aggravation and so laying down the innocence of the first assaulted party, should be construed in cases of counter—assaults having been made in a milder degree than or in an equal degree as the primary assault. As greater culpability has been spoken of only in cases of making a heavier counter-assault, so a lesser punishment, as laid down in the (earlier) text of Nārada, should be meted out to the counter-assaulter and such cases

fall within the category of continued quarrels, according to the Ratnākara (pp. 274-5). The use of the word *prati-tāḍayan* implies 'a counter-assault of the same degree', according to Trilocana Miśra in his *Dharmakoṣa.*

Manu and Vaśiṣṭha (III.16) have thus defined an assailant (*ātatāyin*): An incendiary, a poison-administerer, an armed person, a robber of wealth, a dispossessor of one's (corn-) fields and a kidnapper of (another man's) wife—these six classes of persons are known to be assailants.

Viṣṇu (V.191a-192a) and Kātyāyana (cf. VV.802-3) have given the following definition: These seven (six?) classes of persons are to be known as assailants:

A person with a raised dagger (in hand), one with fire in his hands, one on the point of uttering a curse (against another) with his (raised) hand, a person, who is in the habit of killing others by occult practices, prescribed in the *Atharvaveda*, one hostile in attitude to the king and one who violates the chastity of another man's wife.

The Matsyapurāṇa has also said: The men, who are conversant with law, describe the following persons of the world as assailants:

The dispossessor of another man's house and (corn-) fields, outrager of the modesty of another man's wife, the incendiary, the poison-administerer, the person with a raised weapon, one practising occult rites (for bringing about another person's ruin or death), and one who acts adversely to the king's interests.

Brhad-viṣṇu has also forworded the following classification (of assailants):

A person with a raised dagger, a violator of the chastity of another man's wife, a robber of wealth, a poison-administerer, a killer by *Artharvaveda* practices and one, who destroys another man's inherent strength—these six classes of persons are known to be assailants.

D. V. adds: The additional mention of the dispossessor of one's fields over and above that of the robber of one's wealth is for the purpose of showing various kinds of wealth. So in cases where both the dispossession of one's small cornfield and robbing one of a large amount of wealth bring about the loss of that person's livelihood, the culprits concerned are termed 'assailants'. The acts, hostile to the king (*rājagāmi ca paiśunam*), are those statements, the utterance of which causes instantaneous death of the king. 'One, who destroys another man's inherent strength (*tejoghnam*)" means 'one, who destroys the Brahmanic vigour of a person by administering wine to him'.

When, however, no apprehension of death can be made by a person by any conceivable means, such a person, with a weapon in hand and raising it aloft, does not fall within the category of an assailant.

So the Bhaviṣyapurāṇa has prescribed the following penance in such cases:

O hero ! even if a person intentionally puts to death a Brāhmaṇa, versed in the Vedas and engaged in assaulting (*praharantam*) (him), he should perform the extreme penance, extending over twelve years.

D. V. adds: The word *prahāra* (included within the participle *praharantam*) does not mean here 'death', which is absurd but 'assault' or 'complete destruction of eyes and other organs'. In view of the occurrence of the word *udyatāsi* or its synonyms in all the above (four) texts, the settled interpretation is that such action (i.e. causing death of another person with the dagger raised) must be in the very stage of being committed and not to have been committed nor to be committed to render a person, convicted of that crime, an assailant. This is right, as the issue of a warrant of arrest of the offender or of an injunction against the apprehended one may be had in those two latter cases, where taking the law into one's own hands becomes unjustified on the authority of the following anonymous text: "One should not take a weapon (in one's hands) even for the purpose of a trial."

But somebody has said: Whatever may be the arguments in cases of assault, one, who has already committed the offence of kidnapping another man's wife, is (certainly) an assailant on the maxim of *Kaimutika* (=kim+uta+*ṣṇika* suffix) (i.e. not to speak of or it goes without saying), inasmuch as the already committed kidnapping (of another man's wife) is graver than an actual commission of that offence and the killing of a kidnapper in such cases should entail neither any punishment nor any obligation to undergo expiatory rites upon the killer.

The above view is questionable, as the gravity of the crime to be committed (by an assailant) is not the justifying reason of his being put to death (by the assailed person) but the realr eason is that the very preservation of ones' own life, which is a peremptory necessity, cannot be accomplished otherwise in those cases. Such impossibility of effecting self-preservation is directly visible in a case of (severe) assault and is indirectly to be inferred in other cases and is, therefore, not to be qualified by other factors. Alas ! if it is argued why should there be a prescription, justifying the killling of the kidnapper, when, in the case of such kidnapping another man's wife, self-preservation is possible directly or indirectly, we say in reply that protection of one's wife is equally mandatory as self-preservation, as Manu (VIII.359b) has laid down in his topic on the molestation of other men's wives: "The wives of all[173] the *varṇas* are the best among the things to be protected," and has also said in

[173] Manu reads *caturṇāmapi* (i.e. of four) and D. V. reads *sarveṣāmeva*.

that topic (cf. VIII.353) of 'the destruction of everything, resulting from the miscegenation of castes, due to the outraging of the modesty of a person's wife by others'.

Let there be the purification by the subsequent menstrual discharge of women, subjected to other men's connection due to mistake, pride or infatuation of the former or outrage by the latter. So, when even, in cases of outrage the prescription of three nights' (i.e. of three full days') expiation has been laid down, that is to be construed in relation to women who have either not begun menstruating or have ceased to menstruate and thus the conflict of the above two prescriptions is resolved. In a case of an intentional adultery of a woman, her purification is effected by the performance of the *cāndrāyaṇa* penance. But if such adultery results in conception or abortion and if the woman is found to have had sexual intercourse with a teacher, a pupil, a degraded person, a *Cāṇḍāla* and similar other respected or despised persons, she is to be deserted, which desertion consists in depriving her of association with her husband and participation in religious actions, as has been the settled conclusion of the (previous) digests by means of reconciliation of the texts of Bṛhaspati, Yama, Yājñavalkya, Śaṅkha, Vaśiṣṭha and other sages. But the author of the Mit. has prescribed purification of the woman by subsequent menstruation in all cases of adultery (not followed by conception), committed by her and has supported his opinion by adding that subsequent menstruation absolves a woman of the sin, accruing from the mental adultery, committed by her out of a desire to enjoy a man other than her husband and that desertion is the penalty for her, if she has conceived as a result of the physical adultery, which is due to a connection with a Śūdra only on the authority of the following text:

The wives of Brāhmaṇas, Kṣatriyas and Vaiśyas, if found guilty of sexual connection with Śūdras but not having borne any child on that account, become purified by expiation but not those, who have given birth to any child.

Such being the combined import of the sacred lore, how is it that death-sentence of even a Brāhmaṇa molester of other men's wives has been prescribed simply out of a fear of miscegenation? Even if it be a case of rape, an element of force is manifest even in the (consenting) molestation of another man's wife (i.e. in adultery) (*priyādharṣī*) just like in that of outraging her modesty (*atikramakārī*), on account of the word *dharṣī* having been derived from the root *dhṛṣā*, meaning 'haughtiness' and also because all the words viz. *apahārī, ati-krāmiṇam and abhi-gāminam* also mean the same thing and indicate the greater culpability of the man involved. If it is argued that in spite of the general nature of the *kṛt* (i.e. verbal) suffixes to imply actions

only, the particular *kṛt* suffix *nini* (which has been used in the word *priyādharṣī*) is really a part of an already commenced action, we say that the argument is wrong, because inspite of the existence of a part of an already commenced action in the *nini* suffix, alternatives have been prescribed such as (*automatic*) purification by the next menstruation or passage of three full days in a case of rape and a sentence of death here is simply for averting the invisible consequences (and not for securing ends of justice). So the question of committing the above offence intentionally is dispensed with, as even an intentional adultery can be purified by *cāndrāyaṇa* and even in a case of conception, resulting from such adultery, no appellation of miscegenation is to be applied there, as these cases do not fall within that category. Moreover, such miscegenation arises out of kidnapping (and subsequent intercourse) by members of *varṇas* other than that of Brāhmaṇas and Nārāyaṇa has explained the following sentence in the text of Manu (VIII.348a), viz., 'Arms should be taken up by members of the twice-born classes' that (Brāhmaṇas may take up arms) only when their distress arises out of contact of the higher caste wives with men of lower castes. So wherefrom comes the sanction for the death of the Brāhmaṇas?

Kidnapping of another man's wife is not in itself a cause of miscegenation but it becomes so, if followed by the procreation of a child (in her). So if cohabitation is performed in a period of time outside the three menstrual nights (of the kidnapped woman), kidnapping does not constitute a positive fault. So let there be death-sentence for Kṣatriyas and Vaiśyas only, cohabiting with a Brāhmaṇa woman within the three menstrual nights.

In fact, on the authority of the following text of the Bhagavad-gītā (I. 40b), which is a kind of Upaniṣad, it is a settled conclusion that miscegenation without any difference occurs, when a Brāhmaṇa or a non-Brāhmaṇa intentionally or unintentionally cohabits with (other men's) wives: "O descendant of Vṛṣṇi (i.e. Arjuna) ! if women become corrupt, miscagenation (certainly) arises."

So Śaṅkha-likhita have thus assigned in the following statement deviation from chastity as the cause of miscegenation: "Women, having become corrupted by the loss of their chastity and enjoyment by others, become the cause of the mixture of castes."

Such being the case, there is no impropriety in putting to death (the violator of another man's wife's chastity), only if the corresponding lapse cannot be cured even by the performance of penance.

The following opinion of somebody is, therefore, questionable:

"It follows from the following text of the Brahmapurāṇa that death is the proper punishment of Brāhmaṇas and others, when engaged in the act of

cohabiting with other men's wives: Persons, found flirting with other men's wives, were put to death by the husbands of those wives out of spite." As the concluding portion of the above-quoted text (of the Brahmapurāṇa) contains the clause viz. *patitas te prakīrtitāḥ* (i.e. they are known to be degraded), which is in the form of a substitute of the sentence of death, (having been added to the previous portion of the text) to prove the degrading character of the crime described in it, so the entire text only emphasizes the prescription of a substitute of death proper (in the form of social degradation, which is *civil death*).

As the above text (of the Brahmapurāṇa) does not limit the operation of an injunction (*vidhipūrvako hi niyamaḥ*) but simply lays down the extreme prescription of the penalty of death owing to the inclusion of the word *dveṣāt* (i.e. out of spite) in it, so the view that the above text only emphasizes the settled conclusion is also untenable and we say in reply that an outrager of the modesty of another man's wife is certainly an assailant, having been included as such in the list of such persons but his absence of sin follows from the text viz. (*n-*) *ātatayi-vadhe* [i.e. no (sin or fault) accrues from the killing of an assailant].

The above arguments have been forwarded by us on the authority of the view of Bhavadeva.

But the author of the Mit. has said: "The following text of Kātyāyana is of the Arthaśāstra (i.e. Polity):

One should put to death an assailant, approaching him with the express intention of killing him, though the latter may be an adept in the Vedic love and the former does not thereby become a Brāhmaṇa-murderer. But the following text of Manu (XI.90) is of the dharmaśāstra (i.e. Law):

This purification of the sin of an unintentional Brāhmaṇa-murder has just now been described but there is no deliverance from the sin of an intentional Brāhmaṇa-murder.

In a case of conflict between the above two texts, the dharmaśāstra text is to be considered as of higher authority, as Yāj. (II.21b) has laid down: The settled principle (of interpretation) is that dharmaśāstra (injunctions) are more weighty than arthaśāstra (prescriptions).

Thus, Manu, having commenced his remarks with the text (VIII.348), beginning with the sentence viz. "Arms should be taken up by Brāhmaṇas (or by members of the twice-born classes)" and ended them with the text (VIII.349), beginning with the phrase viz. "for the preservation of one's own self", has laid down the immunity from punishment of persons, convicted of killing an assailant with a weapon, not fitted with disguised dangerous parts and his later statement, beginning with the words, viz. 'A teacher, a

child or an old man' (VIII.350) (killing whom, come as assailants, is permitted without any consideration), is simply an elaboration of his previous statement. Moreover, due to the occurrence of the particle *vā* (i.e. or) in this last verse of Manu, the second line of which also contains the word *eva* (i.e. even), Manu permits one to kill even such persons as a teacher, who are never to be put to death, not to speak of other (ordinary) assailants. But it does not necessarily follow (from the above statement of Manu) that a teacher and similar other persons are to be killed on such occasions, on account of the following texts of Sumantu and Manu (IV.162) respectively:

"There is no fault in killing an assailant, except it or he be a cow or a Brāhmaṇa." "One should not kill one's preceptor, adviser, parents, teacher, Brāhmaṇas, cows and all other hermits."

The present text of Manu lays down the general prohibition only of killing persons such as one's preceptor, who have turned assailants and nothing more, killing any other person having been prohibited by the general statement of law. Thus the next text of Manu (VIII.351), beginning with the clause viz. 'No fault arises from the killing of an assailant' (being partly the same as the text of Sumantu, just quoted above) is to be interpreted as applying to cases other than a Brāhmaṇa etc. Assailants have been defined in general a little above in the texts beginning with the words viz. *agnido garadaḥ* (i.e. the incendiary, the poison-administerer etc.) and with the word *Udyatāsim* (i.e. a person with a raised sword etc.). So if Brāhmaṇas etc., turned into assailants, have inadvertently been put to death by a person who simply tried to repel their attacks for preserving his own self etc. without any express motive of killing them, then the latter has got to undergo a light expiation only and is not to be punished by the king. Nārāyaṇa has also explained the text of Manu (VIII.350) as prescribing the mutilation of limbs only (of a person, killing his assailant of the excepted kinds), as shown above. But Śūlapāṇi, after having interpreted the particle *eva* in the phrase *hanyād eva,* occurring in the above text of Manu, as laying down a *niyama* (i.e. qualified injunction) only, has offered the following remarks (in his Prāyaścittaviveka, pp. 65-7), in continuation of the following text of Kātyāyana (cf. V. 804), quoted and explained by him:

[The text]

"When a crime is going to be committed by a person, who *has not been annoyed* by another person, by trying to take the life or property of the latter, the former is to be accused as an assailant."

[Śūlapāṇi's explanation]

So, when a person, after *having been annoyed* by another person, is going

to commit murder (of the annoyer), such a person is not to be called an 'assailant' but shall incur a lapse only for killing him.

[Śūlapāṇi's remarks]

Finding negation of the principle, laid down in the above-quoted text of Kātyāyana in the following texts of Sumantu and the Bhaviṣyapurāṇa respectively,

[Sumantu's text]

'No fault arises in killing an assailant, except when it or he be a cow or a Brāhmaṇa and in doing so, one has to undergo expiation only'.

[The Bhavisya-purāṇa text]

'One should never kill a cow or a Brāhmaṇa, even if the latter has injured the former',

Śūlapani has, by way of giving his final conclusions, again quoted and explained a text of Kātyāyana (V.801) to the following effect:

[Kātyāyana's text]

Bhṛgu (has laid down) that when a person, superior by dint of penance, Vedic study or birth, becomes an assailant (i.e. a desperate felon), he should never be put to death but killing is prescribed for a sinner of a lower class.

[Śūlapāṇi's explanation]

The word 'birth' (*janma*) means 'the caste and family (of the assailant)'. So a higher-caste assailant should never be killed by a lower-caste person, assailed against. In cases where both the parties belong to the same caste, one, superior to the other in penance, learning or family, should not also be put to death.

Śūlapāṇi has concluded his remarks by quoting and explaining the Bhagavad-gītā (I.36a), which is to the following effect:

So it has been said in the Bhagavad-gītā:

"Sin will accrue to us, if we kill these (*etān*) assailants".

[Śūlapāṇi's explanation]

The word *etān* (i.e. these) means 'Bhīṣma and others, who are possessed of very high merits."

Halāyudha has also given his conclusions in accordance with the texts of Kātyāyana.

So it appears that the text, authorising a person to kill his assailant, which is based on the Śruti text, laying down the necessity of self-preservation, is similar in import with another Śruti text, prohibiting suicide, as it is improper to say that one should protect one's own self and at the same time to lay down that, after having flown into rage, one should not kill oneself by starvation or by swallowing poison etc., as the latter prohibition follows from the former injunction. The following Śruti text, "Those, who kill

themselves, go (after their death) to those worlds, where there is no sun and which are enveloped with blinding darkness," is equal in implication to a former one, relating to self-preservation. Otherwise, in the absence of anything to subsist upon, one has to preserve one's body even by partaking of human flesh and similar other uneatables and for that purpose one may even steal gold, belonging to a Brāhmaṇa. Owing to the necessity of establishing absence of contradiction between two injunctive texts, when either of the two injunctions, one prescriptive and another prohibitive, has been taken into another, the other automatically becomes superfluous, and so the above line of reasoning is unjustifiable. If not so, the prescription for the performance of penance, laid down in the following text of Gautama (II.3.45), already explained by us in the sub-chapter on exemption from punishments, viz. "A person, without any ostensible means of livelihood (and consequently stealing other men's things), has to undergo penance", promulgated by that authority in relation to a Brāhmaṇa in the topic of theft (p.151 of D.V.), becomes contradictory.

The view, expressed by Nārāyaṇa, while interpreting a text of Manu, that the sentence of death, prescribed by his author, is not real death but mutilation of limbs, is questionable, as preservation of one's ownself is also impossible by cutting off one's own limbs and such a prescription similarly amounts to the transgression of the former injunction. It is improper that there should be murder of a Brāhmaṇa by another person simply for the preservation of the self of the latter, as an intentional Brāhmaṇa—murder entails upon the murderer the life-consuming penance, as laid down in the Kāṭhakaśruti and Āpastamba (I.24.24) in the following two texts respectively:

"One, suffering of starvation, should ascend fire." "(After having spoken of the penance to be performed for twelve continuous years) this supreme vow should be practised (to court death) up till the last breath exists."

So let us not discuss this topic any more, on account of the maxim viz. "It is better not to touch a quagmire than to cleanse it (after having touched it)."

So by analogy of the text of Viṣṇu (III.43) viz. "One should protect one's own self everywhere and one's territory with one's all might, if attacked by an enemy", prescribing self-preservation, (the king), when attacked by an enemy, has the imperative duty to protect his territory with all his powers, which implies the protection of his subjects and of all those, who have taken shelter under him. So with that end in view, a Brāhmaṇa may (sometimes) be put to death owing to the imperative necessity of the protection of subjects. Just as the Śruti text viz. "One should procure (the meat of) an animal for purposes of Vedic initiation" is not barred by another Śruti text viz. "One

should not kill any living creative", as both the above texts can be reconciled by the maxim of *utsargā-pavāda* (i.e. a general rule and its exception), similarly in the present case, if it is said that there is no contradiction between the texts viz. "One should slay an approaching assailant" (Manu VIII.350) and "One should not kill Brāhmaṇas and cows" (Manu IV.162), a Brāhmaṇa assailant (and not an ordinary Brāhmaṇa) may be put to death and the entire latter text, beginning with the words *ācāryañca* (A preceptor and . . .), does not thereby become superfluous. Moreover, if it is said on the authority of the following text of Dakṣa that the latter text of Manu is indicative of greater sin, then let the former text (of Manu) be construed as authorising the killing of an assailant who is other than a Brāhmaṇa, which way of interpretation effects a reconciliation of the above two texts:

[Dakṣa's text]

A gift, made to a non-Brāhmaṇa, is simply equal in religious merit (as prescribed for the gift), which merit is doubled, if made to a person, who calls himself a Brāhmaṇa (i.e. who is a Brāhmaṇa only by caste but does not follow the duties, laid down for a Brāhmaṇa). This religious merit is increased one hundred thousand times (i.e. a lakh times), when made to one's preceptor and becomes imperishable, when made to one's full brother. Just as equality, two times, (a hundred) thousand times and endlessness (of the religious merit) emanates from the above four classes of persons respectively, so do the results, which follow killing (of creatures). So an intentional murder of a Brāhmaṇa assailant brings about the corresponding sin in full, which becomes aggravated when the offence is committed in respect of one's preceptor (come as an assailant) but does not arise at all when perpetrated against Kṣatriyas and others. In fact, though there is certainly immunity from punishment in cases of killing Kṣatriyas and similar persons, turned assailants, on the authority of the text of Kātyāyana (V.482), beginning with the words 'where there is possibility of death' (*prāṇatyaye tu yatra syāt*), quoted by us in the topic of exemption from punishment (p. 39 of D.V.), yet a small amount of sin undoubtedly occurs, on the authority of the following texts of the Bhagavad-gītā (I.33b, 34 and 36a):

"O Madhusūdana (i.e. Kṛṣṇa) ! I do not wish to kill these persons such as preceptors, sires, sons, grandfather, maternal uncles, fathers-in-law, grand-sons, brothers-in-law and other cognates. If I kill them, approaching as assailants, sin will surely accrue to me." So Rāma had to undergo expiatory rites for killing his assailant Rāvaṇa and the performance of the horse sacrifice by Yudhiṣṭhira for atoning for the sin, consequent upon his killing the Brāhmaṇa Aśvatthāman and brother Karṇa, who were up in arms against him, becomes justifiable. So, even when the Lord (Śrīkṛṣṇa) was offering

encouragement (to Arjuna), who, having been horrified by the apprehension of consequent sin, had left fighting (against his own kinsmen), the former did not accord the latter permission to kill those assailants. He rather described death (of human beings) as nothing but the destruction of the peculiar connection of the body with the mind and spoke of the soul, which, being eternal, is not subject to death, which is impossible in its case and to substantiate his above thesis, he introduced the views of the metaphysical Sāṁkhya philosophy. An alternative has been provided by the following text [of the Bhagavad-gītā (IV.37), uttered by the Lord, finding Arjuna] in an abhorrent attitude: "If you are a worse sinner than all other sinners, you will be able to cross that ocean (of sins) by means of the boat of knowledge."

The science of self-meditation, though difficult to be put into practice, was introduced (by the Lord) for that very purpose. It is for this reason that even when Lord Vyāsa was asked by Yudhiṣṭhira how to atone for the sins, committed by the latter, the former, without according his acquiescence to the latter's past conduct, advised the latter to perform the horse sacrifice.

Thus the above-quoted texts of Manu and other authorities having been coustrued in relation to non-Brāhmaṇa offenders, the text of the Bhaviṣyapurāṇa also (cited above) viz. 'after (intentionally) killing (a Brāhmaṇa, versed in the Vedas), who has assaulted a person' is also to be construed in the same way, as having been laid down with that very implication. If we take it according to its usual explanation, the heavier punishment, prescribed by it, becomes improper. The *sūtra* of Sumantu (quoted above) also lends support to the above line of interpretation of the Bhaviṣyapurāṇa text. Bhavadeva Bhaṭṭa has said that the above *sūtra* (of Sumantu) is not a single *sūtra* (i.e. aphorism) but a combination of three (separate) *sūtras* which thus lend support. to our interpretation. So, after having pronounced the proper penance for Brāhmaṇa-murder and also having prescribed a similar penance for those, who associate with such murderers, Sumantu has laid down the *first* aphorism to prohibit the penance by saying that "fault accrues to cases other than" etc. (*doṣo'nyatra*), while his *second* aphorism condemns killing of persons, other than assailants (*nātatāyi-vadhe*) and his *third* aphorism viz. "a killer of cows and Brāhmaṇas should have to perform penance" (*go-brāhmaṇān ghnataḥ prāyaścittaṁ kuryāt*) states the appropriate circumstances, necessitating the performance of a (particular) penance. The penance of *go-snāna* is "ablution of one's body with the water, which has flown down after having washed the horns of a cow", as Vyāsa has said;

An ablution with the water, which has flown down after having washed the horns of cows, is equal in religious merit to that, (accruing to a pilgrim, who has) constantly visited all the places of pilgrimage in the three worlds.

If it is argued that the insertion of the word *Brāhmaṇa* in the above (first) injunction, just following the word *go* (i.e. cow), has been made to lay down the ablution for a Brāhmaṇa for clearing away the sins, accrued to him (for the above offence), that argument is to be discarded as having been opposed by the Mit. and other authorities, involving as it does the splitting of a single *sūtra* to fit in with two propositions. As you (i.e. the forwarder of the above argument) have already accepted the interpretation (of Bhavadeva) that the first aphorism (of Sumantu) is an exception to his earlier prescription of the performance of expiation for a Brāhmaṇa-murderer and his analogical prescription of the same for the associates of such a person, so it naturally follows from the above aphorism that such expiation is not to be gone through by an associate of the murderer of an assailant. It is also not an approved way of interpretation to include an associate of a murderer within the term 'murder', as the term has got no such inherent force to be so (extended in meaning). As the Kalpataru has read the above aphorism as '*ātatāyinyadoṣe*', so we may even presume that no word as *vadha* (i.e. death) exists in the aphorism. If the second aphorism is taken to be as laying down the prescription of penance of Brāhmaṇa-murder for association with a person, other than the slayer of an assailant on the logic that the 'fault' (*doṣa*), spoken of here, relates to that association, (our reply is that) the word 'fault' (*doṣa*) has no inherent force to be extended to include penance and moreover, the entire aphorism will thereby be rendered meaningless, as the prescription of penance follows from the analogy itself, which is without any exception. If it is further argued that the aphorism simply deprecates the fault of committing a murder, then there will be a contradiction of the topic under discussion and a negation of the aphorism itself, as such condemnation of killing automatically follows from (the earlier) prescription of death-sentence, which is without any exception. We have also to presume an implied sense in the word *go* (i.e. cow) to be used in the sense of 'cows' horns (*gośṛṅga*)'. If we say that the fifth case-ending in the word *brāhmaṇāt* is in the sense of the third case-ending, meaning instrumentality, that will also outstrip the limits of the topic itself, as the fifth case-ending has been appropriately added (to the word *Brāhmaṇa*) in course of laying down the prescription of the requesite penances. In fact, why should Sumantu, possessing good senses, having forgotten to write a terse sentence with clear and unambiguous meaning, put down such an aphorism in which the intended sense has become controversial but the unintended one has been made more mani-

fest? So we may (safely) conclude that the entire *sūtra* is one and indivisible and it only lays down the faultlessness in killing an assailant, who or which happens to be other than a Brāhmaṇa or a cow, as that way of interpretation will be in consonance with the dicta of Manu and others and also with the following text of Baudhāyana, quoted in the Rājadharmakāṇḍa of the (Kṛtya-) Kalpataru[174] (pp. 131-2):

"One should not engage oneself in fighting with frightened, drunken and mad persons and persons without armours, elephants, children, old men and Brāhmaṇas, except in those cases, when they have turned assailants. (But if they have turned assailants), no fault arises in killing them, excepting the cases of persons of deficient limbs, charioteers, persons without weapons in their hands or with dishevelled hair, persons who have turned their back (from fighting), who are leisurely sitting at the roots of trees or have ascended them, persons unpractised in arms and cows and Brāhmaṇas". Here in the first sentence of the present text of Sumantu fighting only with a Brāhmaṇa assailant has been permitted but this fighting also has been prohibited in the second sentence with the intention of stopping it, out of an apprehension of killing, resulting from such fighting. So Lakṣmīdhara [the author of the (Kṛtya-) Kalpataru], having cited in the Prāyaścitta-kāṇḍa the texts, permitting the killing of Brāhmaṇas and similar other respectable persons and cows and similar other useful animals, when turned assailants and also having quoted the above-discussed text of Sumantu, has clearly stated that the latter text is in connection with assailants other than cows and Brāhmaṇas. Had this author (i.e. Lakṣmīdhara) also (consulted and) written the text of Kātyāyana, beginning with the words viz. *ātatāyini cotkṛṣṭe* (i.e. if the assailant happens to be a respectable person), his conclusion would have been the same as that of Śūlapāṇi (cited above), i.e. he would not have given his above permission, as the persons, enumerated in the above text of Kātyāyana, would have always been immune from punishment. So sin necessarily follows the killing of an assailant Brāhmaṇa and similar other respectable persons but no punishment is to be inflicted on the killer, as the other text of Kātyāyana, referred to above and relating to *arthaśāstra*, has been overridden by the just following text of Manu. Absence of sin cannot be presumed from immunity from punishment, as inspite of such immunity in cohabiting with a prostitute and similar other women, penances have been prescribed.

So the settled conclusions are the following:

[174] But there are some different readings in the Kalpataru, which also reads the second sentence as of Gautama.

(1) If a Brāhmaṇa, having been enraged for some reason, first strikes against a Śūdra, devoid of merits, the former is to have no punishment, on the authority of the text of Hārīta, containing the words *na vā* (i.e. or not) and discussed in the chapter on abuse (p. 202 of D. V.).

(2) If a non-Brāhmaṇa first attacks a Śūdra or any other person (with or without merits), the former shall be awarded the prescribed punishment, without any consideration, on the authority of the text of Nārada (p. 232 of D.V.).

(3) He, who, having been assaulted by anybody, tolerates the assault, becomes worshipped by words (i.e. respected by others), on the authority of a previous text of Nārada (p. 215 of D. V.), containing the sentence viz. *Sa mānyate*[175] *yaḥ kṣamate* (i.e. he, who tolerates, is respected).

(4) He, who, being unable to tolerate the assault, inflicted upon him by a person of equal or lower social status, counter-assaults that person with just the same degree of intensity, enjoys immunity from punishment, on the authority of the text of Bṛhaspati (p. 233 of D.V).

(5) If the assaulter happens to be a person, superior to the assaulted person in merits, caste and similar other things and the assaulted person happens to belong to the untouchable and despicable classes, the latter, even if making a single counter-assault just equal in degree of intensity with that of the former, becomes punishable, as in such cases toleration being the proper conduct to be followed by the latter, counter-assaults by him are improper on his part (pp. 216 and 217 of D.V., texts of Bṛhaspati and Nārada).

None but a mad man assaults another person without the latter having previously committed any fault (against him). So in cases of persons of lower social status (having been assaulted by those of higher social status), the previous commission of the offence of abuse by the former must be taken into consideration here. Accordingly, the higher-status man, even if counter-assaulting the lower-status man in excess of the original assault, does not thereby commit any fault on the principle underlying the text of Bṛhaspati, beginning with the words '*vāk-pāruṣyā*' and cited in the previous chapter (p. 216 of D.V.).

(6) Thus when a Śūdra without merits assaults a Brāhmaṇa but the latter does not counter-assault the former (but tolerates it), the former is also liable for punishment.

(7) But if he, who being indifferent to the degree of the assault, inflicted upon him, makes a counter-assault and even does it to a greater degree, he is to receive a punishment, lesser than the prescribed one, on the authority

[175] D. V. misreads *sa mānyate* as *sāmānyato*.

of the text of Nārada (p. 232 of D.V.) viz. *pūrve tu vinayo guruḥ* (i.e. the punishment on the former person, starting the assaults, is higher than that on the latter).

(8) But he, after having counter-assaulted the assaulter and seen him remaining silent, starts the quarrel afresh or the counter-assaulter, having found the assaulter desisting from the quarrel after having been assaulted by him, begins the quarrel anew—both these persons will get more than the prescribed punishment on the authority of the text of Nārada (p. 233 of D.V.) viz. *pūrvo vā yadi vottaraḥ* (i.e. the former or the latter person as the case may be).

(9) Thus he, who, having been assaulted by a person with ashes and similar other nasty things, returns the assault by means of a dagger and similar other dangerous things, is to be awarded a heavier punishment on the authority of the text of Kātyāyana (p. 233 of D.V.) and also in consideration of the greater degree of criminality, manifested by the malice and the assault in the latter case.

(10) Where, however, the priority of the assault and the counter-assault cannot be ascertained or where both the assaults are of the equal degree of intensity, both the parties are then to be punished equally as prescribed, on the authority of the texts of Kātyāyana (and Bṛhaspati) (pp.232 and 233 of D.V.).

(11) There is complete immunity from punishment of the person, who kills an assailant, on the authority of the text of Bṛhaspati (p. 233 of D.V.).

The above prescription of punishments (for assaults) holds good in the case of abuses also on grounds of equity, as Nārada has laid down in his prefatory remarks on the topic of abuse and assault viz. '*vidhiḥ pañcavidhas-tūkta etayor ubhayor api*' (p. 33 of D.V.) (i.e. this five-fold prescription is laid down for both these kinds of rudeness (i.e. of speech and punishment—i.e. abuse and assault) and also the two texts of Bṛhaspati, referred to above, have also made it clearer.

The punishment for many persons, assaulting together a single man, has thus been laid down by Yāj. (II.221a): When many persons take to assaulting (*ghnatām*) a single person, they should be fined double the prescribed amount.

D. V. adds: The word 'each' should be supplied after 'should be fined' in the above sentence, on the authority of the text of Viṣṇu (V.73) viz. "Each of the several persons, assaulting (*nighnatām*) should receive double of the fine prescribed." "When a person of superior social status punishes by physical torture such as harassment a man of inferior social satus, who has

committed an act of assault (upon him), the former shall have no punishment (inflicted upon him)"—this conclusion, based upon authoritative texts and also the factors, constituting the inferior social status (of a person), have already been recorded by us in the chapter on abuse and so they should be referred to therein.

Here ends the consideration of the general theory and practice of punishment for the offence of assault (*daṇḍa-pāruṣya*).

PUNISHMENTS FOR ATTEMPTS TO COMMIT ASSAULT

Bṛhaspati (XXI.8a) says on this topic: The fine of the first amercement should be imposed on the person, who attempts to assault another with stones, slabs of stone and wood.

Yāj. (II.216) also says: If a person raises his hands or legs against another, he should be fined ten and twenty (*paṇas*) respectively but the fine of the middle amercement should have to be imposed in cases of raising a weapon (for purposes of assault) and these punishments hold good among all the *varṇas*, beginning with Brāhmaṇas.

D. V. adds that the above two texts (of Bṛhaspati and Yāj.) are concerning attempts of assault between the members of the same castes.

Viṣṇu (V.60-62 and 64) has laid down the following in continuation of punishment (to be inflicted):

The punishments (of the fine) of ten and twenty *Kārṣāpaṇas* are to be imposed on a person, attempting to assault another with his hand and leg respectively and those of the first amercement and the highest (amercement) in cases such attempts are made with the use of wood and weapons respectively.

D. V. adds that the word *uttamam* (the highest) means 'the highest amercement', which very reading occurs in the quotations of the above texts in the Kṛtyasāgara and Smṛtisāgara.

Yāj. (II.215) again says: The very hand of a non-Brāhmaṇa, inflicting injury upon a Brāhmaṇa, is to be cut off but the fines of the first amercement and of its half are to be imposed in cases of brandishing (the assaulting materials) and seizing them (for the purpose of throwing them at the person intended) respectively.

D. V. adds: Both these latter kinds of punishments are to be inflicted in cases of attempts having been made by an inferior—status man to assault a superior-status one. But the author of the Mit. is of opinion that the punishment for a Śūdra, even when attempting to assault (a Brāhmaṇa etc.), is mutilation of his hands and other organs on the authority of a text of Manu, to be quoted by him a little below.

Śaṇkha-likhita have laid down the following in continuation of the imposition of fines, constituting *paṇas*: Fifty-six (paṇas) for making an attempt with assaulting materials (*prahārodyame*) and twice that amount in actually throwing them or striking with them.

D. V. adds: The word *prahāra* in the above text has been derived as 'anything with which a person is assaulted (*prahrīyate S nena*)' and thus means 'stones, clubs etc'. The above punishment holds good only in cases of attempts to assault a member of an inferior *varṇa* by one of a superior *varṇa*.

SPECIFIC PUNISHMENTS FOR COMMITTING ASSAULT

Bṛhaspati (XXI.6-7) lays down (the following punishment) on the throwing ashes etc. towards another person: Throwing of ashes and similar other objectionable things (towards any person) and beating (*tāḍanañca*) with hands and similar other organs are known to be the first variety of assault and the corresponding punishment is *Kārṣāpaṇas*, amounting to the value of a (silver) *māṣa*. This is the punishment prescribed in such assaults, having been committed towards persons of equal social status (as that of the assaulter).

The wise men have prescribed twice and thrice of the above punishment, (when the above offence is committed) towards other men's wives and men of superior social status, in consideration of their relative importance.

D. V. adds: Here the word *tāḍanam* means an attempt (to commit such assault) only, according to Graheśvara Miśra. Harināthopādhyāya is also of the same opinion. If such attempt only is considered as the first variety of assault, then it becomes impossible to lay down increases of punishment in still higher cases of such offence, as such a view comes into conflict with the following text of Kātyāyana:

"Twelve *paṇas* should be imposed as the (pecuniary) punishment for the brandishing of hands and this punishment is doubled, if some objectionable thing is actually thrown towards members of the same caste". So (our view is that) the word *tāḍanam*, (used in the text of Bṛhaspati), means 'assault' (and not an attempt to commit assault), as the particle *ca* (i.e. and) has been used in a cumulative sense. The assaulter having in such cases committed a lesser (but actual) offence only, it appears that the meaning of the word *prathamam* is "(an assault) of the first variety." According to the Ratnākara (p. 259), the word *māṣikaḥ*, used in the above text, means 'amounting to the value of a (silver) *māṣa*' and the word *same* means 'among persons, equal in caste and merits etc.' (cf. Ratnākara, *loc.cit*).

Yāj. (II.213-4) lays down: The punishment of touching (*sparśe*) another person with ashes, mud and dust is known as (i.e. the criminal is to be punished

with the fine of) ten *paṇas*, which amount of fine shall be doubled in doing so with abominable things (*amedhya*), the back of a leg (*pārṣṇi*) and saliva. The above punishments are to be imposed, if the touchings are between persons of equal (social status and merit) Both the above punishments are to be correspondingly doubled if the offence is committed in relation to other men's wives and persons of superior status but should be reduced to corresponding halves, if committed in relation to persons of lower status and merit. Complete immunity from punishment is the rule, when such offences have been committed out of (complete) loss of understanding, drunkenness and similar other causes.

D. V. adds: The word *amedhya* means tears, phlegm, the cuttings of finger-nails, hair and dirty things of the ears, the rheum *of* the eyes and leavings of food. Some authority has explained the word *pārṣṇi* as the 'leg'. A text of Kātyāyana, to be quoted just below, has laid down the punishment for assaulting another with stools etc. As the above texts of Yāj. are (evidently) in relation to the commission of the above offence in the lower part of the body only, the punishments shall be necessarily aggravated, if committed in relation to the middle part of the body and the head, on the authority of that text of Kātyāyana. The word *ādi* (i.e. and others), added to the compound word *moha-mada* (i.e. loss of understanding and drunkenness), implies 'madness and similar other states of the mind'. As striking (a person) with ashes etc. has been intended in the previously cited texts of Bṛhaspati and touching him with the above things is spoken of in the present texts of Yāj., entailing a heavy and a light punishments respectively upon the offender, so it appears that the two kinds of texts are not contradictory to each other. This is clearly indicated from the introductory phrase of the Smrtisāra, viz. 'Yāj. has laid down the following (punishment) in cases of touching the body of another with the following things'.

Kātyāyana (V. 784) has laid down the following punishments for throwing vomitings etc. (against any person): He, who assaults another person with vomited matter, urine, ordure and similar other (nasty) things (*ādi*), is to be punished with a penalty, four times of the prescribed one and the punishments shall be increased to six times and eight times, if such offence in committed in relation to the middle portion of the body and the head respectively.

D. V. adds: The word *ādi*, added to the compound word *chardi-mūtra-purīṣa* (i.e. vomited matter, urine and ordure) implies 'other nasty things such as fat, seminal fluid, marrow and blood'. The increase by four times etc. is in connection with the fine of ten *paṇas* etc.

Manu (VIII.282) and Nārada (*Vāg.* V.27) say: The king should cut off

the two lips, male organ of generation and the anus respectively of the person, spitting over another person's body, urinating or producing a bad sound (*avaśabdayto*) from the anus out of pride (*darpāt*).

D. V. adds: Kullūka Bhaṭṭa has read *avagardhayataḥ*[176] for *avaśabdayataḥ* and explained *gardhanam* as 'insulting (a person) with the sound, issuing from the anus', which, however, makes no real difference in meaning. The word *darpāt* (i.e. out of pride or vanity) has been added in the above text to exclude such offences having been made out of inadvertence, drunkenness, loss of understanding and similar other states of the mind. Kullūka Bhaṭṭa has also added with a reference to the just preceding text of Manu that the present text is in connection with a Śūdra, committing these offences. But (Nārāyaṇa) Sarvajña has, however, said that all the above offences are relating to their commission by persons of inferior status.

Yāj. (II.217) further lays down: A fine of ten *paṇas* is the punishment for disguisedly pulling the leg, hair, or hand of another person catching hold of his cloth and a fine of one hundred *paṇas* is to inflicted for a tormenting way of envoloping another man's body with a piece of cloth and kicking him with the leg.[177]

D. V. adds: According to the Ratnākara (p. 260), the compound word *pīḍākarṣāṅśukāveṣṭa-padādhyāsaḥ* is a *samāhāradvanda* (i.e. a cumulative copulative compound) to be dissolved as *pīḍākarṣaśca aṅśukāveṣṭa-padādhyāsaśca* [i.e. a tormenting pulling and kicking, after having envoloped (the body of a person) with a piece of cloth]. The author of the Mit. is of opinion that the above punishment is to be inflicted when all the acts, mentioned in the above offence, have been done together. But the Kāmadhenu has read the latter part of the above text as *pīḍākarṣāṅṣukāveṣṭe* (*padādhyāse*) and explained it as '(after having enveloped the body of another person with) a piece of cloth (*aṅśukena*), the pulling by which causes pain (to him) (*pīḍāyai yasyākarṣas tena*).

Manu (VIII.283) and Nārada (*vāg*. V.28) lay down: If a person catches hold of another man's hair, the punishment of the mutilation of both the hands (*hastau*) should be invariably inflicted upon him and the same punishment shall be meted out to him also who catches hold of another person's legs, beard, neck or testicles.

D. V. adds: Kullūka Bhaṭṭa has carried the word *darpāt* (i.e. out of pride)

[176] But Manu has read it as *avaśardhayato* and Kullūka has explained *śardhanam* as above.

[177] D. V., though reading *pādādhyāse* as a variant and *padādhyāsaśca* in the quotation of the explanation of the *Ratnākara* in its comments, reads *pādanyāse* in the body of the text.

to this text [178] from the earlier text of Manu. According to D. V., the word *hastau* (i.e. both the hands) has been inserted here to emphasize the punishment of both the hands (of the culprit), even if the offence might have been committed with one hand only.

Hārīta says: The fine of eight *purāṇa*-s is to be imposed on a member of an inferior *varṇa* for shouting against, insulting or assaulting members of the superior *varṇa*-s. The punishment shall be increased to thirty (*purāṇa*-s) in cases of fastening of the cheeks or catching hold of the neck or assaulting on the face or by pulling the hair. The corresponding punishment for plucking the hairs of the body, threatening and beating, is sixty-three (*purāṇa*-s). The penalty shall be increased to two hundred (*purāṇa*-s) for cutting the topknot and the ears and breaking the limbs (*aṅga-bhaṅga*)[179] Either mutilation of the (offending) limb (of the culprit) or imposition of the fine of five hundred (*purāṇa*-s)[180] is the proper penalty for kicking a person with the legs or uttering false abuses against him. But if the above offences are committed by members of the (most) superior *varṇa* (*ādyesu*) (i.e. by Brāhmaṇas), then either a quarter of the above punishments or no punishment at all (*pādo na vā kiṅcit*)[181] should be inflicted upon them, as they belong to the highest *varṇa* and are hence masters of the inferior *varṇas*. The Brāhmaṇa is the overlord of the superior (*varṇas*).

D. V. adds: The word *aṅga* in the phrase *aṅga-bhaṅga* in the above text refers to such limbs of the body as the hands, feet and other (useful organs). The rest of the explanation of the above extract is to be looked for in the earlier chapter on abuse (pp. 202-4 of D.V.).

Manu (VIII.279-80) has laid down: Manu's prescription is that the very limb, by means of which a member of the lowest *varṇa* (*antyajaḥ*) assaults a member of a superior *varṇa* (*śreyāṁsam*), is to be cut off. If such assault is made by raising the hand, the hand is to be cut off and if such beating is effected out of anger with the leg, the leg should be cut off.

D. V. adds: The words *śreyāṁsam* and *antyajaḥ* mean 'a member of the three higher *varṇas*' and 'a Śūdra' respectively.

Viṣṇu (V.66) says: One should not transgress (*atikrāmet*) one's parents and teacher. Mutilation of the (offending) limb is the proper punishment for transgressing the above three persons.

D. V. adds: The word *atikrama* means 'kicking with the leg', according

[178] But Kullūka has done so in the interpretation of the 1st line only and added *hiṁsayā* (i.e. out of desire to inflict injury) in the 2nd line.

[179] Cf. Hārīta above (p. 202 of D. V.) for the following portion of this full quotation.

[180] The earlier shorter quotation reads *pañcaśatantvādyeṣu* for *pañcaśatam vā ādyeṣu*.

[181] The present quotation misreads *pādo na vā* as *pādonam*.

to the Ratnākara (p. 356). Thus the mutilation of the leg, which is the instrument of kicking, is implied here (cf. Ratnākara, *loc. cit.*).

Yāj. (II.232a) has laid down the following punishment in his topic of the same, amounting to fifty *paṇas*: He, who shouts against or transgresses respectable persons or assaults his brothers or wife, (shall be awarded the above punishment).

Bṛhaspati (XXI.9b) also says on this topic: The wise men should devise punishments, appropriate to the injuries, caused by the assaults. The same authority (XXI.10) further says on the topic of assaulting with bricks etc:

The talented (judges) should prescribe the fine of two *māṣas* in cases of assaults having been committed with the help of bricks, stones and logs of wood but the above fine shall be doubled if discharge of blood ensues from such assaults.

Viṣṇu (V.67) has laid down on assaults, committed by means of weapons: One, who creates agony in the body of a person (by means of weapons) but without causing any discharge of blood, shall be fined thirty-two *paṇas*, which amount of fine shall be doubled if discharge of blood is caused.

Manu (VIII.284) has laid down the following punishment for piercing against the skin and causing greater discharge of blood (of the assaulted person):

He, who pierces against the skin of another person and causes the red (i.e. blood) to come out, shall be fined one hundred (*paṇas*). The piercer of the flesh should be awarded a fine of six *niṣkas* but the piercer of the bones should get banishment (as his punishment) (*pravāsyaḥ*).

D. V. adds: The *niṣka*, spoken of in the above text, means a silver *niṣka* coin, as no qualifying adjective has been placed before the word and also because (six) silver *niṣka* coins seem to the adequate amount of fine in such offences. But Nārāyaṇa has explained the compound word *ṣan-niṣkān* as (six) *dīnāra* coins. Kullūka Bhaṭṭa has given his opinion that this text is concerning the same castes (of the assaulting and assaulted persons) and persons, belonging to castes, other than Śūdras. (Nārāyaṇa) Sarvajña has interpreted the word *pravāsyaḥ* as "to be banished from the country, after having all his property been forfeited (by the king)."

Bṛhaspati (XXI.11-12) says: The first, the middle and the highest amercements are to be inflicted upon (persons, convicted of) piercing against the skin, doing so against the flesh and breaking (fully) the bones (of another person) respectively. But death is the proper panalty for committing murder. (*ghātane tu pramāpaṇam*) The fine of the middle amercement shall also be (ordered) for cutting off another person's ears, nose or hands or for breaking the teeth or bones of another person. But twice the above various kinds

of pecuniary punishment shall have to imposed, if the parts of the body, struck against, fall down (*patiteṣu*) to the ground.

D. V. adds: According to the Ratnākara (p. 263), the words *ghātana* and *pramāpaṇa* mean 'murder' and 'death (-sentence)' respectively.

Kātyāyana (V.781) says: Bhṛgu has laid down that cutting off (*chedane*) of the ears, lips, nose, legs, eyes, tongue, the male organ of generation and hands entails the punishment of the highest amercement and the breaking of (*bhedane*) (i.e. causing injury to) those parts of the body the middle amercement (upon the wrong-doer).

D. V. adds: The words '*chedana*' and '*bhedana*' mean 'causing them to fall down from their positions' and 'cutting asunder' respectively. (cf. Ratnākara, p. 263).

The same authority (V.969a) adds: All the above punishments are to be applied against persons, committing similar offences (*samāparādhānām*).

D. V. adds: The word *samāparādhānām* means 'of those, who cut off or break other limbs of the body'. According to the Ratnākara the entire above prescription is concerning the commission of such crimes out of inadvertence.

Yāj. (II.219-220) has laid down: The fine of the middle amercement is to be imposed in the following classes of offences:

Breaking of hands, legs and teeth, cutting off of ears and nose, causing an almost healed-up sore to reappear, assaulting a person to make him almost dead, causing the stoppage of one's movements, of taking meals and of the power of speaking, piercing into eyes and similar other tender parts of the body and breaking the neck, arms and the thigh.

The same authority (i.e. partly Yāj. II.304) has further said: The punishment for a Śūdra, who pierces through both the eyes of a person, is eight hundred (*paṇas*).

D. V. adds: The above text is concerning a piercing, which is curable. According to the Ratnākara (cf. p. 264), the word *aṣṭaśataḥ* means 'eight hundred *paṇas*'.

Viṣṇu (V.68-72) says: The fine of the middle amercement is to imposed (on the wrong-doer) for breaking hands, legs and teeth and cutting off the ears and nose (of another person) and for causing stoppage of (another person's) movements, taking meals and the power of speech,. The fine of the highest amercement is to be inflicted (upon the culprit). for assaulting (a person) and breaking or damaging (a person's) eye, neck and thigh. The king should not release from life-long imprisonment (the criminal), who pierces into (i.e. plucks out) both the eyes of another person or he should render the offender devoid of both his eyes.

D. V. adds: The addition of the cumulative particle *ca*(i.e. and) at the end of the words viz. *prahāra-dāne netra-kandharāsakthyāñca* indicates that punishment for the several kinds of offences, enumerated by these two compounded words, is to be higher than the middle amercement, spoken of just above. The phrase *Bhaṅge ca* is to be construed with the second word, beginning with *netra*. According to the Ratnākara (p. 264), in these statements (of Yāj. and Viṣṇu) and in the statements (of other authorities) also, various prescriptions of corporal and pecuniary punishments for the same offence have been made. Causing of great or little pain and the wealthiness or poverty of the criminal are to be taken into account for the infliction of those (apparently contradictory) punishments. The commutation of the pecuniary punishments into corporal ones is also to be considered in the light of the possession or absence of wealth of the assaulter, according to Ratnākara (p.264).

Manu (VIII.286) has laid down: The punishments to be inflicted upon the criminals should be in proportion to the degree of pain (*duḥkhāya*), experienced by the men or the beasts after having been assaulted (*prahṛte*)[182] by the former.

D. V. adds: The word *duḥkhāya* implies 'the intentional infliction of the assault'. So when the infliction of the pain is due to inadvertence and is thus not intentional, no fault arises. (cf. Ratnākara, p. 265, the reading of this comment portion of which is somewhat faulty).

Nārada (cf. *vāg*. V.31) also says on this topic: That (*yaḥ*) wicked person, who assaults the king, even if the latter may have committed an offence, should be first impaled (*śūlyam*) and then burnt alive, as the former is a criminal, more despicable than the murderer of a hundred Brāhmaṇas.

D. V. adds: The word *yaḥ* (i.e. that person) refers to a non-Brāhmaṇa and the word *śūlyam* means 'subjected to that punishment of being pierced through the flesh of his body after having made him mount on a stake'. (cf. Ratnākara, p. 266).

Here ends the sixth chapter entitled *daṇḍapārusya* (i.e. assault) in the *Daṇḍaviveka*, composed by Mahāmahopādhyāya—*dharmādhikaraṇika*-Śrī-Vardhamāna.

[182] D. V. and Ratnākara (p. 265) read *prakṛte* for *prahṛte*, read by Manu.

CHAPTER VII

PUNISHMENTS FOR MISCELLANEOUS OFFENCES

(prakīrṇa-daṇḍa)

There is a following collection of verses (describing the various subdivisions of these offences): The sages, while subdividing the miscellaneous offences, have classified some of them as *uddiṣṭāḥ* and some others as *muktakāḥ*, beginning with *sāhasa* in the latter and have incidentally spoken of two other divisions viz. *vivāda-viṣaya* and *vyavahāra-pada*. So these make up four kinds, which have been described (in detail) in the four corresponding portions, just following the first portion, devoted to *vyavasthā* (i.e. prescription or definition). So there are five *vargas* (or subdivisions) in this chapter on miscellaneous offences.

D. V. adds: As the above subdivision has been made on the basis of the preliminaries (of judicial procedure) owing to the differences in their conclusions in the form of laying down the requisite punishments, so no fault arises in the overlapping of twos and threes among them in such a subdivision. The *vivāda-viṣaya* (i.e. titles of legal disputes), intended here, is of eighteen kinds, as laid down by Manu (VIII.4-7), beginning with recovery of debt and ending with gambling and prize-betting. It is for this reason, thūt the topic of the collection of taxes (by the king), though described in the *nibandhas* along with the above eighteen kinds (of titles of law), has been left out in our discussion on that subdivision and introduced in our preliminary sub-chapter (of this chapter) in view of the introduction of the above topic by Kātyāyana and other authorities in that sub-chapter. The offences such as theft, though connected with the titles of law, have also been left out by us in this chapter, as those offences do not fall into the category of 'miscellaneous offences'.

Bṛhaspati (XXIX.I) says on this topic (on *vyavasthāvarga*): The suits, lodged by complainants, have been thus described in brief. I shall now speak about the suits, to be started by the king himself (*nṛpāśrayaṁ vyavahāraṁ*) i.e. *suo moto*, which are termed as 'miscellaneous offences (*prakīrṇaka*)'.

D. V. adds: Though suits concerning murder etc. are also dependent on the king (*nṛpāśritāḥ*), yet the king passes his judgments in those suits, after both the plaintiff and the defendant (or the complainant and the accused) have proved their cases and the king has finally decided by pronouncing his punishment on either of the parties, who has been adjudged guilty. But in this chapter on miscellaneous offences the difference consists in the

fact that the king, without any private complaint and after having been apprised by his own spies of the lapses, committed by members of the several *varṇas* in several stages of life and having discussed the relative criminality of the offenders, inflicts the appropriate punishments on them and places them in the path of righteous conduct (from which they have deviated).

So Nārada (*prakīrṇaka* V.6) says: The king should on his own initiative place in the proper paths (the members of) those *varṇas*, who have either deviated from them or have followed any commotion.

Manu (IX.273) also says: If any person of the pious way of life (*dharmajīvanaḥ*) deviates from the path of religious conventions, (the king) should tornent that defaulter from his own Vedic duties with the infliction of punishments only.

D. V. adds that the word *dharmajīvanaḥ* means 'a Brāhmaṇa and similar other persons'.

Thus, both the following acts viz. the forsaking of the prescribed duties and the practising of the forbidden actions, are punishable, as has been laid down by Bṛhaspati (I.131): The King should, (after having made provision for their food and raiment), confiscate the properties of those persons, who habitually omit the performance of their specific duties and commit acts, forbidden for them.

D. V. adds: According to the Pārijāta, the word 'of duties' (*vihitasya*) means 'of those actions, laid down for the individual *varṇas* in several stages of life', and including those, omitted more than once due not to inadvertence etc'. and the word 'forbidden' (*pratiṣiddhasya*) implies 'the regular commission of the fault of eating the uneatables and similar other acts' The Kalpataru adds that the eating etc. (is to be under consideration) with the exception of those, sanctioned by the customs of the country.

Āpastamba (II.27.18-20) also lays down: (The king) should put in a solitary prison the Brāhmaṇa or a member of any other caste, who has transgressed the conventions (laid down in the sacred books) up till his correction and who should be banished, if no such correction occurs (within a specified period of time).

D. V. adds: The Kalpataru has added the epithet 'committer of the forbidden acts' to the pronoun '*anyam*' (i.e. a member of any other caste). The word '*samāpatti*' (correction) means 'his conviction that he would do so next or not do so again'. This punishment is regarding repeated commission of the above offence and relates to Brāhmaṇa offenders also.

Manu (IX.291*b*) has laid down this separate punishment for a non-Brāhmaṇa (offender): He, who transgresses the existing conventions,

(*maryādā*), should be penalised[183] with corporal punishment, consisting of the maiming of his limbs. (*vikṛtaṁ vadham*).

D. V. adds: The term *maryādā* means "the popular conventions, current in a country, caste or family or laid down in the sacred books or promugalted by the king". So the transgressor of those conventions should be immediately put to death (or to similar other torture) on the authority of a text of Nārada (*vāg.*12*a*).viz. Immediate death is the penalty for transgression of conventions. The author of the Ratnākara (p. 294) has interpreted the phrase '*vikṛtaṁ vadham*' in the above text of Manu as 'physical torture in the shape of cutting off the ears etc. (of the offender)' and has explained the word *ghāta* in tha above text of Nārada, read with the latter half of the text of the same author (vāg. V.11b). viz '*hastipa...geṣu ca* (D. V. p. 217) as 'harassment (*tāḍanam*)', on the authority of the first half of the above text of Manu (IX.291*a*), which is to the following effect: He, who sells spurious seeds (passing them off as genuine ones) and digs out (other men's) seeds (to sell them), (should get the *vikṛta vadha* as punishment).

So the above explanation (of the Ratnākara) should be taken as concerning cases, not involving repetition of the above offences. In cases of repetition by Kṣatriyas and others, not followed by any correction on the part of the offenders, the import of the word '*vadha*', connected with two portions of the above text (of Manu), is the actual sentence of death, and the corresponding punishment of banishment is justified in the case of a (similar) Brāhmaṇa (offender).

If it is argued by an objector that the acceptance of the interpretation of the Ratnākara for some portion of the above text and that of 'yours' (i.e. the present author) for some other portion are incompatible, then our reply is that the objection, put forward, is just but in connection with the mention of the single word *vadha* (i.e. death), which may also be interpreted by explaining it as harassment, mutilation of the limbs and death proper in conformity with the specific offences concerned, just as, after having interpreted the single word *śarīram* (i.e. relating to the body), occurring in the text of Śaṅkha-likhita, beginning with the phrase *Kūṭa-śāsana-prayoge* (i.e. in the use of a forged royal document), as 'shaving of the head etc.,' (p. 296) concerned as it is in that context with suits, involving the use of spurious balances etc., the Ratnākara (p. 369) has explained the same word as 'death (itself)', concerned as the same text is (in this latter case) with suits, involving the transgression of the royal orders.

[183] Manu and Ratnākara read as *vikrtam*, which also occurs in the quotation of the latter's interpretation by D. V. also.

Here ends the first section entitled *vyavasthāvarga* (i.e. the subdivision of definition) in the *prakīrṇaka* (i.e. the chapter on miscellaneous offences).

UDDIṢṬA-VARGA

(i.e. classes of offenders, enumerated in the chapter on miscellaneous offences)

Nārada (*prakīrṇaka* VV.1-4*a*) has thus described the contents of this chapter: Litigations, started by the king himself (*vyavahāro nṛpāśrayaḥ*) and included within the chapter on miscellaneous offences, may be of the following varieties:

(1) Transgression of the King's orders, (2) Performance of the special duties, to be discharged by him only, (3) Creation of dissension among the prominent citizens and among the ministers, (4) Reversal of the conventions of the heretics, ordinary merchants (*naigama*), merchants, trading with other countries (*śreṇī*) and of the guilds, (5) Disputes between father and son, (6) Violation of the performance of expiatory rites, (7) Abolition of the practice of the acceptance of gifts, (8) Abolition of the persons, placed in (and discharging the duties of) the several stages of life, (9) Fault of inter-mixture of the *varnas* (i.e. miscegenation), and (10) Rules guiding the voluntarily accepted special occupations of the several *varṇas*.

D. V. adds: Halāyudha has explained the word *naigama* as the association of many citizens and the Kalpataru has interpreted the word *śreṇi* as the federation of the merchants, farmers and similar other classes of persons, engaged in similar work.

Kātyāyana (V. 946*a*) has added thc following (to the above list of Nārada): Performance of the king's (special) duties, and one's own duties[183a] and disquisition on doubtful matters-all this is *prakīrṇaka*[183b]

D. V. adds: The mention of 'one's own *dharma*' (*sva-dharrmān*) along with the king's duties (*rājadharmān*) (in the above text) is really to avoid the contradiction between these two kinds of duties. The word *niścitatvena* (i.e. with the idea of their certainty) is to be supplied after the phrase viz. *saṇdigdhānāñca bhāṣaṇam*[183c] (i.e. disquisition on doubtful matters). This applies to cases where another person's injury is done by the untrue statement (of a person) and not to those cases, where the performance of penance only has been prescribed by the use of the phrase '*niṣkṛtīnām akaraṇam*' (i.e. non-performance of the expiatory rites).

[183a] D. V. misreads *svadharmānśca* as *tradharmānśca*, which former is translated here.

[183b] Supplied from Kātyāyana (V.946b) for reasons of context.

[183c] D. V. misreads *bhāṣaṇam* as *bhāvanam*,

Bṛhaspati (XXIX.12) has laid down (some other additional things):—(Non-payment of) the sixth-portion, the ferry-charges and the thing to be thrust into pits, the disrupter of battles and thieves and the destroyer of standing crops.

D. V. adds: The word *ṣaḍ-bhāga* (i.e. the sixth portion) relates to gold, lost but subsequently recovered by a person, which sixth portion should be received by the king (from the hands of the person, recovering the gold) and the thing to be thrust into pits (*garte deyas*) refers to the eatables, dedicated in the Vaiśvadeva sacrifices, to be so done (for their utilization by animals and insects).

The same authority (XXIX.13-15) goes on saying: Non-performance of the expiatory rites, transgression of the royal injunction of arrest (*āsedha*) of either of the contesting parties (in a suit), abolition of the several *varṇas* and stages of life, the abolition of (the truth about) the intermixture of castes, (suppression of facts concerning the finding of a) treasure-trove, (misappropriation of) the wealth of a person, who has died heirless, (sudden) acquisition of wealth by a poor man, (performance of) religious duties, not laid down in the sacred books, the unauthorised pronouncenent of the judgment of the litigants, (creation of) anger among the ministers, (making of) secret signs by two persons between them and the practice by the subjects of acts, condemned in the holy books—all these should be described below.

D. V. adds: The topic of *āsedha* (i.e. arrest) will be elaborated in the section on *vyavahāra-varga* (i.e. section on judicial procedure). Treasure-trove (*nidhi*) is of two kinds, which will be described below. The sudden acquisition of wealth by a poor man, who is without an ostensible means of livelihood and is thus suspected of having acquired a treasure-trove, is a cause of his punishment.

Yāj (I.361) says on this topic: The king should inflict punishments upon and place in the proper way of life the families (*Kulāni*), the castes (*jātīḥ*), the merchants, trading with other countries (*śreṇīśca*), the several guilds of the betel-leaf-sellers etc. (*gaṇam*) and artisans (*jānapadān*), if found deviating from their respective duties.

D. V. adds: The families relate to 'those of Brāhmaṇas' and the castes to 'those of the Kṣatriyas and others'. The word '*gaṇam* means 'the guild of the betel-leaf-sellers etc.' and *jānapadān* implies 'that of artisans'. The word *vinīya* (i.e. after having punished) has been added here simply because it is not possible to restrain the erring persons by words only without threatening them, as such persons pay no heed to the Vedic texts, laying down the unseen bad results of sins, accruing from their commission and thus have no faith in and respect for mere words.

So the punishability of all the classes of offenders, enumerated in the above several lists, if found transgressing the rules and conventions, prescribed and to the followed, has been laid down and the lists may be supplemented even without the existence of any other special ones, in considerations of time, place and circumstances. This is the settled conclusion.

Śaṅkha-likhita have laid down the following punishment for the transgression of the king's orders: Corporal punishment (*śārīro*) or mutilation of the limbs (of the offender) is (to be resorted to by the king) in offences such as the use of forged royal documents, transgression of the royal orders and employment (in business transactions) of spurious balances, weights and measures.

D. V. adds: The word *śārīrah*, used in the above text, is 'the sentence of death' according to the Ratnākara (p. 369). Though the same authority has explained the above word as 'shaving the head of the culprit etc.' (p. 296) in its chapter on 'overt thieves', yet that explanation is in consonance with the offence of employment of the spurious balances etc. only. The same authority (p. 369) has also explained the mutilation of limbs (*aṅgaecheda*) as 'cutting off of the limb, with which the offence has been committed' and has added that 'its substitutes are to be applied according to the gravity or lightness of the offence'. Thus, if a short royal document has been forged by somebody, the offending limb of that person is to be mutilated according to the degree of culpability.

So, while explaining the following text of Manu (part of IX.275): "(The king) should inflict various corporal punishments (*ghātayed vividair damaiḥ*) on those persons, who act adversely to his orders", Kullūka Bhaṭṭa has said that those, who do so, should be punished with the mutilation of their hands, tongue etc. in proportion to the gravity of their offences.

Yāj. (II.303*b*) has laid down the following punishment for a person, usurping the privileges of the king: One, who ascends the (beasts of) conveyance and the (special) seat of the king, should be awarded (the fine of) the middle[184] amercement.

D. V. adds: The conveyance (*yānam*), spoken of in the above text, means elephants, horses etc. and the seat (*āsanam*) refers to the throne. The phrase 'without the King's permission' is to be supplied after the above text.

Kātyāyana (V. 955) also says: All those, who engage themselves in royal sports or betake to the avocation of the king or speak ill of him, should be put to death.

[184] But Yāj. reads *uttama* (*—sāhasaḥ*) for *madhyama* etc., read in D. V.

D. V. adds: The phrase *rāja-krīḍāsu* (royal sports) implies 'the sports and actions, reserved for the king' and the clause '(who) assume the role of the king' (*tad-vṛttyupajīvinaḥ*) means 'who do such acts as the administration of the subjects'. These two kinds of act, when performed without the permission of the king, become punishable.

The same authority (part of V. 956) continues by saying: Those, who imitate the king in his appearance (dress etc.), should be subjected to various kinds of physical torture. D. V. adds that 'without the king's permission' should also be supplied here.

Viṣṇu (V. 14) lays down the following punishment in continuation of the word '*hanyāt*' (i.e. should be put to death), (occurring in an earlier text of the same author):

Those persons, who, having sprung from less dignified families (*akulīnāḥ*) (than that of the king), aspire for the kingdom.

Yāj. (II. 295) further says: Those, who tamper with a royal order by increasing or diminishing the amount of money (to be paid or to be received) recorded in it or let loose profligates or thieves, shall be awarded the fine of the highest amercement.

Kātyāyana (V. 954) also says: He, who succeeds in his cause by means of a false means of proof (*pramāṇena*) or by a forged seal (*mudrayā*), shall be awarded the highest amercement.

D. V. adds: The word *pramāṇena* means 'by a document' and the word *mudrayā* implies 'containing the signature etc. (of the king) affixed or engraved on it'.

Manu (IX. 232) also says: (The king) should put to death the forgers of (the documents embodying) royal orders, the accusers of the ministers, the murderers of women, children and Brāhmaṇas and those persons, who associate with the enemies (of the king).

D. V. adds: According to Nārāyaṇa, the phrase *Kūṭa-śāsana-kartṝn* (i.e. forgers of the royal orders) means '(those who) write out forged royal orders'. As the two kinds of punishments viz. sentence of death and the fine of the highest amercement, as laid down by Manu and Kātyāyana respectively, are not similar, so the settled conclusion is that the above two punishments are to be inflicted in cases of graver[185] and lighter types of criminality (of the offenders) respectively. Owing to their total exemption from the capital punishment, Brāhmaṇas are to be fined a hundred gold (coins) as its substitute on the analogy of the commutation of the death sentence, to be passed on a grave sinner, to that of banishment.

[185] D. V. misreads *alpūrnalpāparādha* as *alpānaparādha*.

Nārada has laid down on the offence of creating dissensions among the city elders: The king should not tolerate the effecting (of the big persons)[186] of associations, (*saṅghāta-karaṇam*), hostile to the public interest, the taking up of arms without necessity (*ahetau*) and harming one another.

D. V. adds: The word *ahetau* means 'without any apprehension of fear'. The king should not tolerate these heretics (and scoundrels) of the city but punish them as severely as he can. The punishment, laid down here for effecting undesirable alliances among the biggest persons, should be applied to cases, involving the ministers also.

As disturbance of the settled practices results from the reversal of the conventions of the heretics and similar other persons, so Nārada has laid down: The king should keep intact the characteristic conventions (*samayam*) of the *pāṣaṇḍas, naigamas, śreṇīs, pūgas, vrātas, gaṇas* and others (*°ādiṣu*) in the fort[187] as well as in the localities.

D. V. adds: *Pāṣaṇḍas* are "persons outside the pale of the three Vedas (i.e. the hereties, such as Buddhists, Jainas etc.)" and *pūgas* mean 'guilds of merchants (and artisans)'. but according to some authority they imply "the occasional associations of various kinds of traders." *Vrātas* include "all the members of the armed forces." The addition of the word *ādi* indicates the inclusion of the *saṅgha* and other associations, of which *saṅgha* means "the collection of the Jainas and the Buddhists", *gulma* means "that of the Cāṇḍālas and other untouchables" and *varga* includes all other unspecified associations. The word *samaya* means 'the conduct in connection with technical religious practices.'

Bṛhaspati (XVII. 9*b*-10*b*) has laid down the following gradation of the officers-in-charge of the villages and towns who should not be transgressed: (The king) should appoint the best and most experienced men (to supervise) all the affairs (of the territory). Such men by twos, threes or fives should be engaged to cater to the interests of the entire community. The *śreṇīs*, the *gaṇas* and other associations of the village should abide by their decisions.

Yāj. (II. 188*b*) says: He, who acts adversely to the actions (of those men), shall be punished with the first amercement.

Kātyāyana (V. 671) also says: He, who criticises the justified actions (of the group) and who gives no scope to the speaker (when the group meets) or who speaks out what is absurd, shall be awarded the first amercement.

D. V. supplies the word *Kāryacintakeṣu* '(to the planners of actions)' after *brūyāt* '(speaks out)'.

[186] D. V. wrongly inserts *sanghāta* between *prakṛti* and *pratikūla* in the comments here.
[187] Nārada reads *durge* but D. V. reads *dvande*.

Manu (VIII. 219-20) again says: He, who after having joined, with the utterance of an oath, an association of the villagers or the country-men, subsequently quarrels with it out of greed, should be banished from the territory. Such a transgressor of conventions should also be subjected to physical harassment and should be made to pay a fine of six *niṣka* coins, collectively weighing equal to four measures of gold and a silver *śatamāna* coin in addition.

D. V. adds: According to the Ratnākara (p. 181), the word *catuḥ-suvarṇān* (i.e. four measures of gold) is an epithet of the word *niṣka* (i.e. the compound word *ṣaṇ-niṣkān*) to obviate the interpretation of the latter word otherwise, as laid down in the chapter on technical terms. But Kullūka Bhaṭṭa has interpreted it to mean 'each of the six *niṣkas*, weighing equally with four measures of gold and an alternative punishment of a silver *śātamāna*'.

Kātyāyana says on the acts, relating to conventions: The acts (relating to a convention) should be performed by all the members of that convention. But he, who, though (physically) able to perform them, quarrels about them, should have his entire property forfeited (by the king) and should also be banished (by him) from the city (or the territory). A person, creating dissension into or showing indifference towards a convention, should be punished with a fine of six *niṣka* coins, collectively weighing equally with four measures of gold.

D. V. adds: The dissension (*bhedam*), spoken of in the text, is to be interpreted as 'between the several members of that association' on the authority of the following text of Nārada:

Those, who create dissensions of the several *gaṇas* (i.e. associations), should be specially punished.

The explanation of this two-fold preseription of punishments for the same offence is to be looked for in the section on *vivāda-pada* (i.e. titles of law) below.

Yāj. (II. 187) says: (The king) should confiscate the entire property of and banish from the territory the person, who either steals the things (*gaṇa-dravyam*), owned collectively by a conventional association or transgresses (the rules of) that association.

D. V. adds that the phrase *gaṇa-dravyam* means 'the common property of the whole body of members of the village or town'.

Kātyāyana again says: (The king) should forthwith banish from the city (or the territory) the person, who pinpricks another person, perpetrates any other form of cruelty, creates dissension (among the ministers or subjects), indulges in rash acts (*sāhasī*) and acts inimically towards the *śreṇī*, the *pūga* or the king.

Bṛhaspati (XVII. 22) says: Those, who conspire together and deprive the king of his legal dues, should have to pay back ten times of the robbed amount (to the king). The same punishment will be applied to abseonding merchants (who have not paid off the royal taxes).

ON THE TOPIC OF DISPUTES BETWEEN FATHER AND SON

Though no direct punishment has been specifically prescribed in disputes between father and son, yet owing to the stricture passed on such acts, as is evident from the statement (in the section of evidence), viz. *pitrā vivadamānaśca* (i.e. when quarrelling with father), such actions are to be regarded as prohibited and consequently a nominal punishment for transgression of the moral injunction, as laid down in the section on *sāhasa* (i.e. rash acts), is to be meted out (to the witnesses) in consideration of the possession of merit or not by the father. The examples will be given in the topic of evidence below.

Visnu (V. 120-121) says: Witnesses, deposing in a suit, involving a dispute between father and son, shall be fined ten *paṇas*. But he, who acts as their instigator (*sāntarīyaḥ*), shall, however, get the pecuniary punishment of the highest amercement.

D. V. adds that the Kāmadhenu has read *antare syāt* for *sāntarīyaḥ syāt* in the above text.

Yāj. (II. 239) has laid down: Witnesses, deposing in a suit, involving a dispute between father and son, shall be fined three *paṇas* only. But the instigator (*antare ca tayor yaḥ syāt*) between the above two persons shall be fined eight hundred *paṇas*.

D. V. adds: A father, possessed of merit, is intended in the present text, while such a person, devoid of merit, is intended in the previous text (of Viṣṇu). So there is really no conflict between the two texts. But the Mit. has read *aṣṭaguṇaḥ* for *aṣṭaśataḥ* in the above text (of Yaj.) and given the following explanation:

The person, who, instead of preventing the dispute between a father and his son, promises to depose in their suit, should be fined three *paṇas* only. But he, who stands as a surety for the wager in their suit with a wager and also aggravates their quarrel [which is evident from the word '*ca*' (i.e. and) (inserted after the word *antare*)], is to fined eight times the above three *paṇas*, i.e. twenty-four *paṇas*.

'VIOLATION OF THE PERFORMANCE OF EXPIATORY RITES' (*prāyaścitta-vyatikrama*) is the same as 'non-performance of the expiatory rites' (*niṣkṛtīnām akaraṇam*), spoken of by Kātyāyana (by Bṛhaspati?) above. There is an anonymous Smṛti text on the above offence: (The king) should devise the

appropriate corporal and pecuniary punishments for those members of the four *varṇas*, who do not undergo expiatory rites (for their lapses).

ON TRE TOPIC OF THE ABOLITION OF THE PERSONS, PLACED IN (AND DISCHARGING THE DUTIES OF) THE SEVERAL STAGES OF LIFE, the Devīpurāṇa says: Depopulation sets in in a king's territory, where a self-restrained person takes his meals in the houses of prostitutes and similar other despicable persons or where a Vedic student, who has taken a pious vow, partakes of the food, prepared by a prostitute and similar other socially degraded persons and by a Śūdra woman.

The same authority adds: When an ascetic, wearing yellow robes, sits down on the bare ground and thus bids adieu to his vow (of asceticism) or associates with persons like prostitutes, a general consternation arises among the people.

D. V. adds: The occurrence of the words *yasya rāṣṭre* (in whose territory) in the former text and the implication of the inherent poverty of the offenders from both the texts necessitate the infliction on them of the punishment of turning them out of the territory either by conciliatory or any other (drastic) method.

Dakṣa also says on this topic: He, who, after having adopted the life of a recluse, does not really remain in that life by the performance of the requisite duties, should have his person imprinted by the king with the foot of a dog and should be immediately transported by him from the territory.

D. V. adds that this punishment is relating to Brāhmaṇas.

Nārada has said elsevhere. When the members of the three twice-born *varṇas* deviate from the life of a recluse (after having once taken it up), the king should order banishment for the Brāhmaṇa offenders and servi tude for the Kṣatriya defaulters.

D. V. adds: Śūdra offenders in such a case shall have to undergo servitude on account of the maxim of *Kaumutika* (i.e. it goes without saying).

ON THE TOPIC OF THE FAULT OF THE INTERMIXTURE OF VANAS, the same Devīpurāṇa says: When there is a possibility of miscegenation owing to the spread of the practice of partaking of forbidden things such as wine of the practisers of Śaiva ascetics and consequent generation of (universal) fear, the real reason is the currency of the Śaiva and other *tantras*.

As Yāj. (II. 186) says: The *sāmayika*, which does not conflict with his own duties, should also be carefully protected by the king as also the laws, promulgated by himself.

D. V. adds: According to the Ratnākara (p. 180), the term *sāmayika* means '(the practices) made for the welfare of the entire community' but according to the Mit., "it has been derived from the word *samaya* (i.e. time)

and hence means 'the preservation of the grazing fields of cattle, preservation of water, maintenance of the temples etc,". The word *rāja-dharma* means such laws made by the king, which insist upon a person to perform monthly propitiation of the maleficient deities and do similar other things, on behalf of the king.

Kātyāyana (V. 670) says (on the *rājadharma*-s): That wicked person, who does not obey the laws, promulgated by the king and thereby sets at naught the king's orders, is to be imprisoned (*grāhyaḥ*) and punished.

D. V. adds that the word *grāhyaḥ* here means 'is to be put in prison'.

The topic of the punishment of the assessors and similar other persons for their pronouncement of judgment in favour of either party before the final disposal of the suit will be described in the *vyavahāra-varga* (i.e. section on judicial procedure).

On the topic of the recovery of lost property

Yāj. (II. 33) says: The king should hand over to the real owner of an article of value, lost (by him) but recovered (by another person), if the former can tell him its peculiar characteristics. Otherwise, the false claimant is to be fined the value of the thing concerned.

D. V. adds: The word *pranaṣṭam* (i.e. lost) means 'left (by him) out of carelessness in the office of the tax-collector or on the road or snatched (from him) by thieves'. The officers of the tax-collection office or those of the police-station should make over such recovered articles to the king on the authority of the following text of Gautama:

"The officers (or other men), having come upon an ownerless article, should hand it over to the king." The king should deliver that article to the real owner, if he can prove his ownership over that thing by such characteristics as "of white colour" or "of a round appearance". But if the latter fails to substantiate his ownership, he should be fined the value of the thing concerned on the authority of the following text of Manu (VIII. 32):

If a person fails to tell (the king) the exact time and place (when the thing was lost) or the colour, appearance and dimensions (of the thing), he should be fined an amount, equal to the value of the thing itself.

D. V. adds: The author of the Mit. says that the punishment inflicted here is for making a false assertion. This is right, as such texts as 'a really false asserter (of ownership over a thing) is to be fined thrice the value of the thing' do not apply to those cases, in which a defendant is not guilty of any wilful false assertion. In case the real owner (of the thing) fails to turn up at once, the king should wait for him for three years, as

Manu (VIII.30*a*) has laid down: The king should keep in his own custody for three years an article, the owner of which cannot be found out.

D. V. adds: Kullūka Bhaṭṭa has said that the king, after having proclaimed by beat of drums whether anybody has lost something, should place the article at the door of the royal palace. The Mit. says that the time limit of three years implies 'if so necessary' (i.e. the upper limit).

Manu (VIII.30*b*) has further given his verdict about what to do if the real owner does not turn up within that period: If the real owner turns up within three years, he shall take it back (*haret*) and (if he does not turn up within that period of time), the king shall take it.

D. V. adds that according to the Mit., the verb '*haret*' has been used (in the case of the King) for granting himself the permission to spend or utilize it.

The same authority (i.e. Manu VIII.33) has laid down a special rule on the above: The king should (while making over the lost thing to the real owner) appropriate its one-sixth, one-tenth or one-twelfth portions, following the practice of the good.

D. V. adds: The Ratnākara (p. 346) says that the alternatives of one-sixth etc. are to be adopted in consideration of the smallness, medium character and bigness of the expenses of preserving the thing. Halāyudha has also given his opinion that the taking (by the king) of the one-sixth or other portions has been laid down in accordance with (the expenses of) preservation. But Kullūka Bhaṭṭa is of the view that (the above three kinds of portions to be appropriated by the king) are in consideration of the worthiness or unworthiness of the real owner of the thing. The author of the Mit, has, however, said: If the real owner turns up within a year, the king should deliver the entire thing to him. But if he does so in the second, third or fourth year, the king should deduct one-twelfth, one-tenth or one-sixth portions respectively of the thing as the preservation costs and deliver the remainder to the owner. But if the latter turns up after the lapse of three years, the king should give him a portion, equal to his own portion (i.e. one-sixth). But even if long after three years the owner fails to turn up, the king should make over one-fourth portion only of the thing to its recoverer but the same portion of the king's charges only should be paid to the latter, in case the real owner happens to turn up long after the lapse of three years, as Gautama (II. I. 36-38) has said:

After having come upon an ownerless thing, (the finder should report it to the king,) who should, (after having made a public proclamation,) preserve it for a year only, after which period one-fourth of the value of the thing shall be passed on to the finder of that thing and the remainder appropriated by the king himself,

D. V. adds that all the above prescriptions are in connection with gold (lost and subsequently recovered).

Yāj. (II.174) has laid down the following rule about other kinds of things (so lost and afterwards found):

Four *paṇas* are to be paid to the recoverer of single-hoofed animals and five such to that of a human being. Two *panas* each are to be made over to the reeoverer of buffaloes, camels and cattle and a quarter (*pādam*) (of a *pana*) each only to those persons, who make over (to the king) goats and sheep, similarly lost and afterwards recovered.

D. V. adds: According to the Ratnākara (p. 345), the single-hoofed animals include horses and similar other animals and the *pāda* (i.e. a quarter), in the above text means 'a quarter of the (previously stated) four *paṇas*, i.e. a single *paṇa*'. But it appears that a quarter of a *paṇa* (and not a whole *paṇa*) is meant here according to the context. The author of the Mit. has prefaced the above text of Yāj. with the remark that "the following text is an exception in cases of some objects to the general rule, prescribed by Manu (VIII.33) about the one-sixth and other portions of the thing concerned to be taken by the king" and has explained the text as follows:

The owner of one-hoofed and other animals, originally lost and later on found (by the king), should pay to the king four and other corresponding *paṇas*.

The Kalpataru has also given iis explanation of the necessity of paying four *paṇas* by the owner to the king as costs of the preservation (of such animals).

In fact, the costs of preservation of horses, human beings etc., such as one-sixth (of the value of the thing concerned), equally applicable to that of gold and other things, are quite separate matters. The present prescription of four *paṇas* etc., being the daily maintenance charges, is an altogether different topic. Otherwise, irrespective of the values of the several things concerned, the difficulties of preserving the several things are sometimes inversely proportional to those values, inasmuch as a huge quantity of gold can be easily stored up in an under-ground pit, whereas a horse of quite insignificant value in comparison to that of gold is difficult to be kept in custody (even within a greater space). So it seems that the above two explanations (of the Mit. and the Kalpataru) should be construed as relating to the almost immediate arrival of the owners of those things.

Āpastamba (II. 28.7-9), as quoted in the digest of Halāyudha, is to the following effect: One should, after having brought back to the village animals, which have been inadvertently left in the forest, make them over to their respective owners. If such lapse is repeated only once, the former person

should pen them up and if the mistake is further repeated, he should not deliver them at all.

Vaśiṣṭha (XIX.23-24) has laid down in his topic on *ferry charges*: The following persons are exempted from the payment of such charges:

A *Srotriya* (i.e. a Vedic student, practising Vedic duties), the king, an orphan (or a diseased person), a recluse, children, old men, just delivered women, carriers of (royal) messages, maidens and widows.

D. V. Adds: The text of Manu, cited by Vaśiṣṭha (XIX.37) beginning with the words viz. *na bhinnakārṣāpaṇam asti śulkam* (i.e. no taxes for articles, worth less than a *Kārṣāpaṇa*) has been quoted by us in the section on overt thieves (p. 95 of D. V.)

Viṣṇu (V.131-133) says: The boat-man (*tarikaḥ*), charging a person with *sthala-śulka*, (i. e. land carriage tax) is to be fined ten *paṇas*. He is also to be similarly fined, if he extorts ferry charges from Vedic students, forest-repairers, mendicants, pregnant women and pilgrims. He should exempt all these persons (from the ferry charges).

D. V. adds: The word *tarikaḥ* here means 'the person, engaged (by the king) to collect charges (from passengers) for ferrying them over a river or similar other water-course.' As the persons, enumerated in the present text of Viṣṇu, are almost the same as those listed in the previous text of Vaśi, ṣtha, such as a *Srotriya* and others, so the boatman, referred to in the latter, if guilty of realising ferry charges, should be similarly punished and should also be compelled to pay back the realised amounts to the persons concerned. The sheet of water, which can be easily crossed over with one.'s feet, is as good as land and so the charges for crossing it on a boat amount to *sthala-śulka* (i.e. land charges). Hence the punishment of the fine of ten *paṇas* is to be imposed on the boatman, who insists on a pedestrian, crossing a river on foot, to get up on his boat and subsequently extorts ferry charses from him.

Halāyudha also says: A boatman (*nāvikaḥ*), not having really ferried (a man over a small stream) but exacting ferry-charges from him, is to be fined ten *paṇas*.

But the Kalpataru has read *sthānika* for *nāvikaḥ* in the above text and explained it as 'the man in charge of the ferry *ghāt* i.e. the toll-man'.

In fact, *śulka* (i.e. tax) is of two kinds, viz. land tax (*sthānika*) and ferry charges (*tārika*).

The first kind has thus been described by Viṣṇu (III.29): (The king) should realise one-tenth portion as the (commodity) tax from indigenous merchandise. The second kind has also been described (by the same author) as follows:

The tax to be given for any commodity, carried by a conveyance, is one *paṇa* and that for any such, carried by a human being, is one-half *paṇa* only.

D. V. adds: So the following punishment (procedure?) has been laid down for realising one-tenth portion as the tax on a commodity, carried by a man inasmuch as a person becomes exonerated of the duty of payment of the (commodity) tax (by paying it) in proportion to the weight (of the thing to be sold) and not according to its value, otherwise the (commodity) tax, charged on am erchant, would exceed his profit. The view of the Mit. is also to the same effect.

Vaśiṣṭha (XIX.25) says: One, who swims across a river where ferry-system exists, is to be fined one hundred *paṇa*s.

D. V. adds that the obvious reason is the consequent loss of the king's revenue (if a person does so).

ON THE TOPIC OF THE DESTRYER OF STANDING CROPS (*śasya-ghātana-kṛt-tathā*), (specified in Bṛhaspati's text, quoted on p. 263 of D. V.), the Mārkaṇḍeyapurāṇa says: A big town or city (*pura*) is a place, encircled with high walls and ditches on all sides, half a *yojana* (i.e. half of nine miles) squareand divided into eight parts. A *Kheṭa* (or a small town) is half in dimensions of a big town or city and a *Karvaṭa* (or a smaller town) is three-fourths in area of a *Kheṭa*. A *grāma* (or a village) is a cluster of houses, situated within agricultural and pastoral land, mainly inhabited by Śūdras and possessing a highly flourishing peasantry.

D. V. adds: According to the Dānasāgara (of Ballāla Sena) (p. 145), a *Karvaṭa* is a principal village among two hundred ones and a *Kheṭa* is a village, two miles long.

Yāj. (II. 166*a* and 167) has thus described the dimensions of the land, to be set apart in a village:[188] The grazing land of cows is to be made either with the common consent of the villagers themselves (*grāmeecchayā*)[189] or by order of the king. This land should be situated at a distance of one hundred *dhanuḥ* (i.e. four cubits each) in a village, at a distance of two hundred *dhanuḥ* in a *Karvata* (i.e. a small town or a principal village) and at a distance of four hundred *dhanuḥ* in a big town or city.

D. V. adds: The first mention of the word *grāma* (in the compound word *grāmeecchayā*)[189] means 'the residents of the village, town etc.' The idea

[188] The text of Bṛhaspati, quoted on p. 267 of D. V., has laid down several duties to be performed in villages and other units (*grāmaśganāenl-rḍibhiḥ Kartayaṇ* to be placed before the following.

[189] This is the reading of Yāj., also supported by the just following of comments of D. V., the text in which, however, misreads it as *grāme tu yā*.

(of the above citation) is that land is to be set apart for the grazing of cattle, in accordance with the (common) consent of the villagers (or townsmen) themselves or by orders of the king and in consideration of the smallness or bigness of plots of land, so available. The extent of the distance between such village or town and the grazing fields is to be graded as one, two or four hundred *dhanuḥ*, according to the circumstances of each case. As the intervening distance in each case depends upon the dimensions of the village etc., so the distance, available in the case of a *Kheṭa* (i.e. a small town or a principal village but bigger than a *Karvata*), is of the extent of three hundred *dhanuḥ* only.

So Manu (VIII.237) has laid down: A hundred *dhanuḥ* (or three *śamyā-pāta*-s[190]) shall be the extent (of the grazing land) on all sides of a village and thrice the above extent shall be that, encircling a town.

D. V. adds: A *śamyā* is a stick and so *śamyāpāta* means 'that portion of land, crossing which a stick, thrown by the arm of a man of moderate strength, falls down on the ground.' Three times this distance is also known as 'the intervening space between a village and its fields of crops'. This way of measurement has been spoken of here, owing to the lack of measurement, due to the possible ignorance of the extent of a *dhanuḥ* and the availability of a *śamyā*. The above explanation is in accordance with the readings adopted and interpretations made by the earlier digests. But (Vācaspati) Miśra has in his Vivāda-cintāmaṇi (p. 103) read the above word *śamyāpātāḥ* as *sampātāḥ* and explained it as *Kāṇḍapātāḥ* (i.e. throwing of the trunk of a tree). All these measurements are tentative. The real procedure of fixing the extent of the grazing land of the cattle is in proportion to the number of such cattle in the village concerned.

So Viṣṇu (V.147-149) says: No fault arises in the tract of land at the very end of a village (*grāma-vivītānte*) or in an unprotected plot of land on the roadside. But this immunity is allowed (in cases where such feeding of animals goes on) for a short time only.

D. V. adds: The phrase *grāma-vivītānte* means 'in the tract of land, situated at the end of a village and containing within it grazing grounds with growing grass for the use of cattle'. 'Unprotected' (*anāvṛte*) means 'such a plot of land on the road-side with no arrangements for the prevention of animals approaching it'. So if the standing crops of a field, adjacent to a road, are eaten up for a short time by beasts, the herdsmen (of the beasts concerned) are not liable. But they are to be considered guilty in cases of continual eating (by the beasts in their charge).

[190] D. V. reads, both in this quotation and the following comments, *śasyāpātaḥ* for *samyafoatah.*

So it has been said in the Kṛtyasāgara: The culpability of the man-in-charge (of the beasts) is inferred in those cases. The Smṛtisāra has also echoed the same view.

So Yāj. (II.162) has laid down: No fault arises (in cases of such eating up by beasts of crops growing) in fields, situated on the roadside or at the extreme end of a village, if such offence has been committed unintentionally (i.e. inadvertently). But intentional commission of the above offence entails the punishment as a thief upon the offender.

Uśanas also says: The fathers of the person, who asks for the return of the paddy (*dhānyam*), eaten up by (another person's) cows, as also the gods do not partake (of the offerings, made to them by that person).

D. V. adds: The word *dhānyam* (i.e. paddy), used here, is illustrative. If such crops are taken back, they conduce to the attainment of hell (after death) of the persons, who do so. So these crops should not be taken back. According to (Mādhavācārya's) commentary on the Parāśara-smṛti, the above text is concerning the paddy and other crops, lying unprotected near a village.

Nārada (*sīmābandha* V.38 and cf. V.39) has thus laid down this special procedure for the transgressor ofthe above Shāstraic injunction: If a person, whose paddy (*dhānyam*) has been devoured by another man's cattle, asks the latter to give it back to him, it shall have to be so done with the approval of the elders of the village. The amount of paddy, eaten up by one man's cows (*gavattam*), should thus be returned by him to the cultivator. This is also the punishment, prescribed in the other kinds of damages, done to crops by cattle (to be inflicted on the owner of the cattle).

D. V. adds: The use of the word *dhānyam* instead of *śasyam* is illustrative. The reading, adopted here by the Ratnākara (p. 236) and other authorities as *gavatram* (instead of *gavattam*, adopted by us) and the explanation, offered by the former as 'grass', are not to be accepted, as the reading and the explanation are the results of not having consulted the reading, recorded by the Kāmadhenu and other authorities.

Viṣṇu (V.146) says: Also (*ca*) the value of the crops, so destroyed, has got to be paid in all cases (*sarvatra*) to the owner (of the crops).

D. V. adds: The addition of the word *sarvatra* (i.e. in all cases) implies that such payment is imperative, whether the offending beasts were under a herdsman or not so. The insertion of the particle *ca* (i.e. also) means 'in addition to the fine, imposed by the king'.

But Manu (VIII.240*b*) has said: If the beasts were under the custody of herdsmen (at the time of the commission of the above offence), the latter

are to be fined one hundred (*paṇas*) but beasts without herdsmen are to be driven away (by the owner of the field).

Kātyāyana (VV.664-665) says: The beasts, which stray into corn-fields, parks, or reserved pastures, houses and cowsheds (filled with corn) should be seized (*grahaṇam*) and chastised (*tāḍanañca*) as laid down by Bṛhaspati. In the case of beating of the beasts of the lowest, middle and highest classes, if their owners object to such beating, the beaters should be punished.

D. V. adds: The word *grahaṇam* in the above text means 'seizure'. But the Kāmadhenu has read *vā* (i.e. or) instead of *ca* (i.e. and) in the above text.

Here ends the topic of the punishment of the destroyer of crops.

So, if crops are destroyed in places other than the grazing plots of cattle by reason of their having been eaten up or damaged by beasts, the beasts concerned and their herdsmen are to be harassed. The beast-owner's duty of the payment of the value of the (destroyed) crops to their owner and of the fine of equal amount to the king is the settled conclusion in all cases other than the following excepted ones, which are of two kinds, having occurred by reason of an act of State or an act of God or owing to the special -ity of the (offending) beasts.

Nārada (*sīmābandha* VV.36-37) has thus described the first kind: In cases where the cows are seized by the king's men or killed by lightning strokes, bitten by serpents or fallen down from trees, put to death by tigers or other ferocious animals or attacked with diseases, neither the herdsman nor the owner of the cows is to be held guilty for the death of the cows concerned.

The same authority (*sīmābandha* V.30) has also illustrated the second kind: A cow, which has been delivered of a calf not earlier than ten days, a big bull (*mahokṣā*), a horse and an elephant are to be carefully prevented (from further destroying the crops) and their owners should not be made liable for punishment.

D. V. adds: The big bull (*mahokṣā*), mentioned above, means 'an impregnating bull'. Horses and elephants are useful for the administration of the subjects (by the king), on the authority of the following text of Uśanas: Elephants and horses should not be punished, as they are considered useful for the administration of the subjects.

Manu (VIII.242) also lays down: Manu has laid down that cows, delivered of calves, not earlier than ten days, bulls and beasts, dedicated to gods, whether having their herdsmen or not, are unpunishable.

D. V. adds: According to Kullūka Bhaṭṭa, even dedicated bulls are kept by the milkmen for the impregnation of their cows and should, therefore, be considered as possessing herdsmen,

Śaṅkha also says: Beasts, dedicated to gods, he-goats and bulls, even if guilty (of the destruction) of crops, should get no punishment.

D. V. adds: According to the Ratnākara (p. 238), the word 'bull' is to be taken as meaning 'an impregnating bull and one, dedicated (to gods) for the spiritual welfare of the (deceased) ancestors'. A he-goat, specified in the same context, is also to be understood in the above senses.

Uśanas has also laid down: The following (animals) are not to be punished: An animal, blind of one eye, a lame animal, a bull, let loose (in a sacrifice), after having imprinted the sign of the trident and other things on its person, a stray (*āgantukā*) cow, a just delivered cow and a constantly running cow or a cow with highly murderous propensities (*abhi-cāriṇī*).

D. V. adds: According to the Ratnākara (pp. 238-9), the words *Kāṇa* and *Kuṇṭha* imply 'highly incapacitated (animals)', and the word *āgantukā*[191] means 'one, which has strayed from its usual place of residence'. But Graḥeśvara Miśra as well as the author of the Smṛtisāra has explained this word as 'one, which has come from another village'. Halāyudha and others have explained the word *abhi-cāriṇī* as 'of highly murderous propensities' but (Vācaspati) Miśra (V.C. p. 107) has interpreted it as 'a constantly running one'. But the Pārijāta has read the above word as *abbisāriṇī* and explained it as 'running after a bull (to gain fertility)'.

Nārada (*sīmābandha* V.35) has laid down a special rule on this topic: When a cow, having strayed (from the herd) on account of the dereliction of duty by the herdsman, destroys (the crops) of a field, the owner of that cow is not to be held guilty but the herdsman shall get the consequent punishment.

D. V. adds: It appears from the above text that the cow in question is to get immunity from chastisement owing to is unruly nature, as is evident from its having entered into the unfamiliar foreign fold out of fear of impregnation (from the bulls) in its own herd but in such cases of straying from its original fold, the herdsman is certainly to be considered guilty.

Thus ends the discussion of punishments for such offences (of or relating to cattle).

It having been thus settled that punishment is to be meted out in all other cases outside the above (two kinds of) exception, if it is asked, "Are those to be selected for punishment without any discrimination?," we reply in the negative, because the following anonymous text lays down:

Large or small destruction of crops, resulting either from the depreda-

[191] This latter interpretation is not found in the (Vivāda-) ratuākara,

tions of big or small beasts or from those depredations having been done at night or in the day-time or intentionally or unintentionally, becomes the subject-matter of the variation of punishments.

For example, the damages, done by an elephant or similar other big animal within a short period of time, exceed those done by a goat or similar small animal for a longer period of time. (Domestic) animals roam about with satishaction at night either owing to the absence of any preventer or on account of the implicit desire of the herdsman or the master but these animals do not do so in the day-time owing to the absence of the similar desire on the part of the above two classes of persons. The animals also sometimes destroy the very roots of the crops and sometimes their branches and leaves etc. only. Thus, destruction of crops becomes serious or light in view of its cause or its nature, resulting in the heaviness or lightness of the corresponding punishment. So if bearing in mind the very contexts of the commission of particular crimes, learned men consider the different matters, the prescription of contradictory punishments in the texts, cited just below, will be easy for them to follow :

Gautama (II.3.19-23) has laid down: Punishment of five *māṣas* should be inflicted on a cow, six *māṣas* on a camel, ten on a horse and a she-buffalo and two each on a goat and a sheep respectively.

D. V. adds: According to the present context, the *māṣa* is to be taken as a silver one, on the authority of the chapter on 'technical terms' above. But in the Mit. it has been explained as the twentieth part of a copper *paṇa*. This explanation is also justified on the authority of the following text of Kātyāyana:

So, one-fourth part of a *paṇa* and half a *paṇa* are to be imposed as fines on a cow and a she-buffalo respectively.

Such other punishments are to be inflicted in accordance with the particular offences.

Śaṅkha-likhita have said: The young ones of all (animals) are to be fined a *māṣa* each and the she-buffalo is to be charged ten *māṣas*, while the ass and the camel are to be fined sixteen each and the goat and the sheep four each.

Viṣṇu (V.140-145) also lays down: If a she-buffalo commits destruction of crops, its keeper shall be fined eight *māṣas*. But if there is no keeper, its owner shall be so fined. Half of the above amount of fine shall be imposed, if such destruction has been done by a horse, a camel, an ass or a cow and half of that half punishment (i.e. one-fourth of the first mentioned punishment of eight *māṣas*) shall have to be imposed in cases of such des-

truction by a goat or a sheep. But all these fines shall be doubled if such animals, after having eaten up the crops, remain (in the fields), sitting (at ease).

D. V. adds: According to the Kṛtyasāra (o sāgara?) and Smṛtisāra, the horse, mentioned here, refers to 'horses of merchants and similar other persons', as these horses do not help the administration of subjects. On the authority of the following text of Yāj. (II.160*b*) that 'a mule and a camel are to be considered equal to a she-buffalo' and also owing to the mention of all these animals together in the texts (relating to such offences), a mule, a camel, an ass and a she-buffalo are to be considered big animals, a cow is to be taken as a medium-sized one, a goat and a sheep as small ones—this seems to be the classification of these animals.

Śaṅkha-likhita lay down: A cow, found grazing for two consecutive nights, should be fined five *māṣas*.

Nārada (*sīmābandha* V.34*a*) says: Twice the prescribed punishment shall be imposed on cows, exhausted (after eating up other men's crops) and four times on those, who continue residing (*Vasatām*) (in those fields).

D. V. adds that the word *vasatām* means 'of those, who, after having grazed in those fields, pass their nights there'.

Yāj. (Cf. II.160*a*) further lays down: Twice the prescribed punishment and four times of that shall be imposed on residing singly and doing so with calves (in those fields) respectively.

Manu (VIII.240) (partly the same as the quot. on p. 280 of D. V. above) also says: If animals, having their keepers, encroach on a fenced field, situated near a public road or a village, they are to be fined one hundred (*paṇas*). (The owner of the field) should himself drive away the keeper-less animals.

D. V. adds: Animals with keepers are to be driven away by the latter. But if they do not do so, they, being suspected of bad motive, should be fined one hundred

Nārada (*sīmābandha* V.34*b* for the 1st sentence only) says: The wise men have prescribed punishment as thieves for all those, who (forcibly) cause (the animals in their charge) to graze before the very eyes of the owner of a field. The owner (of the offending animal) shall have to pay the value (of the crops eaten up) to the owner of the field and the prescribed fine to the king and the herdsman is also to be punished.

D. V. adds that the above two-fold penalties are to be applied only to the cases, involving the presence on the spot of both the owner of the field and the keeper of the animal in question,

The same authority (*sīmābandha* V.29) further says: In cases involving (wholesale) destruction of crops along with their roots, the owner (of the destroying animal) should pay compensation to the owner of crops and the prescribed fine to the king and the keeper should have corporal punishment (in proportion to the degree of his negligence).

D. V. adds: 'Destruction of crops along with their roots' means 'such destruction as obstructs the thriving of the crops at that place'. The owner of such animal shall have to compensate the owner of the field for the loss, occasioned to the latter, in addition to the payment of the fine to the king. While dealing with the following (anonymous) text, viz. "In cases where such causing the animal to graze in a field results in the generation of much pain on a Brāhmaṇa and similar other persons of very slender means of livelihood, the cowherd concerned is to be put to death (*vadhyaḥ*)", Halāyudha has explained the above term (i.e. *vadhyaḥ*) literally.

The straw and similar other things, left after the eating up of the crops by cows and other animals are to be taken by the owner of the cows etc., such taking on his part amounting to purchasing, as it were, by the price, paid by him as fixed upon by an intermediary. So Nārada, as quoted by the author of the Mit., has said :

The straw left should be made over to the owner of the (offending) cow and the paddy left belongs to the cultivator himself.

D. V. adds: According to the Ratnākara (p. 232), all these punishments are to be inflicted severally on each of the (offending) animals. The infliction of punishment should be upon the herdsman, when the animal is kept under his care and when not so kept, upon the owner of the animal, on the authority of the following text of Viṣṇu (V.140-141), as quoted in the Kṛtyasāgara and Smṛtisāra: "The owner (is to be punished), when the animal has not been kept in the custody of a herdsman but the herdsman shall receive the punishment, when it has been so kept." Returning the crops to the cultivator is to be made in proportion to the quantity destroyed and the physical harassment of the herdsman should be in accordance with the gravity of the offence (committed by the animal in his charge) but such harassment should not be in consideration of the number or quality of the animal or animals (committing the above offence.)

ON THE TOPIC OF THE FINDING OF TREASURE-TROVE (*nidhi*)

A *nidhi* (or treasure-trove) is a previously buried substance, (supposed to be) lost for ever. It is of two kinds viz. one with the owner known and another with the owner unknown, which latter kind is known as '*paranidhi*'.

Manu (VIII.35) has thus described the former kind: The king should appropriate the sixth or the twelfth portion of a *nidhi*, which has been truly and reasonably claimed by a person as his own (lost property).

D. V. adds: Vijñāneśvara (the author of the Mit.) has said that these alternative portions are (to be taken by the king) in consideration of the (change of) colour (of the thing), the time (elapsed after its loss) etc. But Kullūka Bhaṭṭa has expressed the opinion that (this difference in taking a portion by the king) is due to the meritoriousness or otherwise of the [192] asserter of ownership (on the *nidhi*). The Ratnākara (p. 648) is also of the same view. These prescriptions are applicable to cases, where the finders (of the *nidhi*) are persons other than Brāhmaṇas.

So Viṣṇu (III.63-64) says: A person, other than a Brāhmaṇa, discovering wealth, previously buried underground by himself, should give its twelfth portion to the king. But persons, (falsely) claiming (*vadantaḥ*) another person's deposited wealth as their own, shall be fined the same portion of the wealth (*tat-samam*).

D. D. adds: The word *tat-samam* means 'equal to (the same portion of the value of) the deposited wealth', as the wealth having come to his notice first, the determination even of its twelfth portion, if he happens to have deposited the wealth him-self,[193] has arisen in consequence of his finding only. Otherwise, *ca* (i.e. and) would have been added after *vadantaḥ* and not *tat-samam*.

Manu (VIII.36) also says: He, who falsely claims (another person's deposited wealth as his own), should be fined one-eighth of his own wealth or a small portion of the discovered wealth.

D. V. adds: The former punishment is to be inflicted only when the real owner has been definitely found out but the latter in cases when such a person has not been so found out. The small portion to be fined is in consideration of the fact that he may not thereby be ruined. Kullūka Bhaṭṭa has, however, said that the choice between the heavier and lighter punishments is in consideration of the possession of merits or not (by the false claimant).

Vaśiṣṭha (III.13) lays down on the latter kind of discovered wealth: The wealth, whose owner is unknown (*aprajñāyamānam*), if discovered by anybody, shall be taken by the king, who should give one-sixth of its value to the discoverer.

D. V. adds: The word *aprajñāyamānam* may also be of two kinds, viz. 'of unknown ownership' and 'without any owner'. The above prescription

[192] D. V. misreads *vaktṛ* as *bahu*.

[193] D. V. reads *sannihitatvāt* for *sva-nihitatvāt*.

is applicable to cases of wealth, discovered by a person other than a learned Brāhmaṇa, which contingency has been added just below. If discovered by such an ordinary person, the rule of the Brāhmaṇa's share is to be followed but there is no king's share in the wealth, found by a learned Brāhmaṇa.

In the following text of Yāj. (II.35*a*), "the king should appropriate the sixth portion of a wealth, discovered by any other person (*itareṇa*)', after his earlier statement (II.34*b*) viz. "A learned (Brāhmaṇa) should take in full (such wealth)", both Vijñāneśvara (the author of the Mit.) and Caṇḍeśvara (the author of the (Vivāda-) ratnākara) (p.650) have explained the word *itareṇa* as a non-learned person and so Kṣatriyas and similar other persons are not entitled to receive that (learned Brāhmaṇa's) share.

In the following text of Gautama (II. I. 43-45) "wealth, discovered by a learned Brāhmaṇa, does not become the king's property. According to some authority, if the discoverer of such wealth happens to an *a-Brāhmaṇa*, he gets one-sixth portion only of that wealth (and the remainder goes to the king)" The negative porticle in the word *a-Brāhmaṇa* is for censure. Even if we take it in the sense of *paryudāsa* (i.e. a prohibitive rule) it means 'a person other than a learned Brāhmaṇa' i.e. 'an ordinary Brāhmaṇa'. If (*cet*) it is supposed that the prescriptions of the payment by the king of the sixth part to the finder of the wealth, as laid down in Vaśiṣṭha's [194] text and of the acceptance by him of that very part (from some classes of finders), as perscribed in the text of Yāj., are contradictory, the contradiction has been reconciled by the following explanation of a learned author:

The author of the Mit. has said: "The word *itareṇa* (in the text of Yāj.) means 'by persons other than the king and a learned Brāhmaṇa, i.e. by a non-learned Brāhmaṇa, a Ksatriya and others'. If some wealth has been come upon by such latter class of persons, the king should make over one-sixth of its value to the finder and appropriate (*āharet*) the residue himself".

D. V. adds that the (above-quoted) text of Gautama is also to be referred to in this connection.

The same authority (i.e. the author of the Mit.) has further said: "The verb '*haret*' (in the text of Vaśiṣṭha) has been used to permit (the king) to use that wealth, like a property, previously lost and subsequently recovered (*pranaṣṭādhigatavat*). But if the real owner (of the wealth) subsequently turns up and identifies it by giving its description, number etc., the king should then make it over to him after deducting for himself its one-sixth or one-twelfth portion."

194. D. V. misreads *Viṣṇu-vākye* for *vaśiṣṭha-vākye* and *na* after *cet*.

In cases where the king has himself come by a piece of wealth, Viṣṇu (III.56-61) has laid down the following rule in his *rāja-dharma* section:

After having come by a piece of wealth, (the king) should make over one-half of it to Brāhmaṇas and deposit the remaining half in (his own) treasury.

The same authority has also laid down in case of such recovery of wealth by a person, other than the king: A Brāhmaṇa, recovering wealth, should himself appropriate it. A Ksatriya (doing so) should, after giving one-fourth each to the king and to the Brāhmaṇas, take the remaining half. A Vaisya (in similar cases), after having made over one-fourth and one half portions to the king and the Brāhmaṇas, should appropriate the remaining one-fourth[195] portion only. But a Śūdra should first divide the recovered wealth into twelve parts and after having made over five each of such parts to the king and the Brāhmaṇas, should take the remaining two parts himself.

D. V. adds on the authority of the following text of Vaśiṣṭha (III.14) viz. "If a Brāhmaṇa, engaged in the six-fold avocations (appropriate to his caste), comes by (a piece of wealth), the king should not demand it (from him)", that the word *Brāhmaṇa*, used in the above text (of Viṣṇu), is "a Brāhmaṇa, performing the six-fold avocations" only.

Thus, in the following text of Manu (VIII.37): "A learned (*Vidvān*) Brāhmaṇa, having chanced upon a piece of wealth, deposited earlier underground, should take it in its entirety, as he is the lord of everything', (implied) learning also exists only in Brāhmaṇas, discharging their six-fold duties and learned Brāhmaṇas, doing so, are the appropriate objects of the application of the attribute of the performance of the six-fold duties and the two concomitant epithets viz. 'learned' and 'performers of the six-fold duties' are easy to suggest the same idea. So a reconciliation of the two texts, containing the above two epithets, will thus be by signifying the co-existence of the two attributes viz. 'learning' and 'performance of the six-fold duties'. So while explaining the text of Yāj. (II.34*b*) viz. 'A learned (Brāhmaṇa) shall take in full', the Mit. has said, "A learned (Brāhmaṇa), i.e. a (Brāhmaṇa) possessed of Vedic learning and good religious conduct, should take (such wealth) in its entirety." Medhātithi and Govindarāja (two commentors of Manu) have interpreted the above Yāj. text as 'doing away with the duty of making over the king's share, enjoined by the text of Manu (VIII.35) beginning with the words viz. *mamāyam iti yo brūyāt* (i.e. he, who says

[195] D. V. misreads *caturthāṁśam* (i.e. one-fourth portion) as *aṁśadvayam* (i.e. two parts).

that it belongs to me) and relating to that kind of wealth only, deposited underground by (the claimant's) father and similar other ancestors.' But Kullūka Bhaṭṭa has said that the wealth in question includes that, placed underground by others also, on the authority of the following texts of Nārada (*asvāmi-vikraya* V.6) and Yāj. (II.34) respectively:

(Nārada's text)

(Any one,) coming by a wealth, deposited underground by another person, shall present it to the king, to whom all such wealth of all persons except that of a Brāhmaṇa has to go.

(Text of Yāj.)

After having discovered a hidden wealth, the king shall give its half portion to Brāhmaṇas, while a learned Brāhmaṇa, (having done so,) shall take it in entirety, as he is the lord of everything.

Though the above-quoted text of Nārada contains the word *sarveṣām* (i.e. of all persons), which is in the sixth case-ending, and has also got the phrase *brāhmaṇād ṛte* (i.e. except that of a Brāhmaṇa), thereby implying that even when the real owners of such kinds of wealth turn up, (they shall be escheated to the crown,) excepting the case of a *Brāhmaṇa owner* of the wealth in question, yet the above text does not bar the escheating of the wealth, *discovered by a Brāhmaṇa.* The proclamation of the overlordship of Brāhmaṇas in the above text of Yāj. is simply recommendatory (and not mandatory) just like the statements such as 'everything belongs to a Brāhmaṇa'. Otherwise, many contradictions (of texts) will arise and there will be too much extension (of the meaning of words in a text). So to avoid the resulting futility of the connotation of words, ownership over another person's deposited wealth is not recommended here. So it being certain that the word *nidhim* (i.e. wealth), placed after the infinite verb *labdhvā* (i.e. having discovered), means 'another man's wealth', the finite verb *ādadyāt* (i.e. shall take) is to be construed with the above two words. But the king shall do so only when the wealth, though really belonging to a Brāhmaṇa, has not been conclusively proved to be so. Otherwise, if he fails to do so through negligence, many texts, authorising the king to take (unclaimed) deposited wealth, will be rendered useless. But if due to an inscription on the container of the wealth or after questioning an astrologer, the wealth is proved to be a Brāhmaṇa's property, then (in those particular cases), even the king shall not take it, on the authority of the phrase viz. *brāhmaṇad ṛte* (i.e. except that of a Brāhmaṇa), occurring in Nārada's text but shall, after getting it, give it up to Brāhmaṇas, on the authority of the following text of Bṛhaspati on the topic of partnership and also on the purport of the

following text of Nārada (*dayābhāga* v. 51) on the topic of the wealth of persons without direct descendants:

(Bṛhaspati's text)

"A Brāhmaṇa (only) shall take a Brāhmaṇa's property".

(Nārada's text)

"A member of his own caste then (steps into succession)." If it is said that a Brāhmaṇa's taking in this fashion will amount to his (unlawful) appropriation of another man's property, the reply is that the above text (laying down the distribution of that discovered wealth among Brāhmaṇas) does not confer ownership of a Brāhmaṇa in another man's deposited wealth, as has been done in the following text of Gautama (II. I.39):

(A person) becomes the owner of property by means of inheritance, purchase, partition, gift and finding (i.e. seizure) (*cādhigameṣu*)', which latter word viz. *adhigama* has been explained in the digests as 'the finding of deposited wealth'. If it is argued that this unspecified mention (by Gautama) of the finding necessitates the addition of the act of division (among other Brāhmaṇas of the discovered wealth) in the above-cited text of Viṣṇu (III.56-61), we say in reply that this latter text is easy to be interpreted in its plain meaning. If it is further argued 'How can there be an extinction of the right of the real owner by another man's finding of his deposited wealth?', the reply is that such deposited (and subsequently) discovered wealth of an unknown owner is also of two kinds, viz. one with its owner lost and another with its owner not traceable. The former kind, owing to the non-existence of its owner, is uncontrolled and hence ownership arises in it by its mere taking just like that in grass and similar other trivial things. But in the latter kind, extinction of ownership arises out of the foregoing by the (untraceable) owner (of his deposited wealth), as is evident from his act of not searching for it. Or, let there be the employment of the term '*anya-svāmika*' (i.e. having another person as its owner) like that used in cases of other kinds of property, originally lost (by one person) but subsequently recovered (by another person). It should not be assumed from the above text (of Gautama) that the fault of the splitting of sentence (*vākya-bheda*) here simultaneously creates a contradiction between two kinds of assertion (i.e. actual ownership in cases of property got by inheritance, purchase, partition or gift and in that another kind of property, come by a person and received for tentative or conditional ownership), as the above text simply authorises the finder of such property to use it (for the time being). So such kinds of lost wealth (when recovered by a person) shall have to be made over to the actual owners when they

turn up· So the interpretation of the Mit, (quoted above), allowing the option to the finder (of such lost wealth) to divide it into parts, as advised by it, also holds good here.

If it is said that this text, authorising the use (of another man's wealth), is contradictory to the general law, laid down on 'Thefts', the reply is that it is really not so, as it is a text of Polity (*artha-śāstra*), just as (1) inspite of the prohibition by Uśanas (p. 279 of D. V.) of the taking back of crops, eaten up by (another man's) cows, Gautama has prescribed it (p. 283 of D. V.), (2) inspite of the rule laid down by Śaṅkhalikhita (p. 159 of D. V.) of enjoying one's own wife only, Nārada has permitted intercourse with the unsecluded female slaves of other persons (pl. 188 of D. V.), (3) inspite of the complete immunity from the infliction of death-sentence upon a Brāhmaṇa, spoken of by Manu (VIII.380), (p. 239 of D. V.), Kātyāyana has allowed killing such a person, if he comes as an asailant of another person (p. 239 of D. V.), and (4) inspite of the prohibition, laid down by Śātātapa and other authorities, of marrying one's maternal uncle's (i.e. mother's brother's) daughter, as she is related to one's mother by consanguinity, Bṛhaspati has approved of it among the southerners.

So, though the texts of Uśanas, Śaṅkha-likhita, Manu, Śātātapa and others are considered authoritative, being texts of *dharma-śāstra* (i.e. Positive law), yet those of Gautama, Nārada, Kātyāyana and Bṛhaspati, being texts of *artha-śāstra* (i.e. Polity) and laying down immunity from punishment in all those specified cases, become more effective. Hence there is really no contradiction between these two sets of texts. Similarly, though shunning the acceptance of other men's property, laid down in *dharmaśāstra*, is imperative on a person, as such non-acceptance amounts to the practice of a vow, yet he, who appropriates such (unclaimed) wealth, belonging to another person, should be neither blamed nor punished by the king—this is the real import of the text, authorising the seizure of (a person's wealth), originally hidden and subsequently discovered by another person.

Manu (VIII.148) has clarified the above point by the following text:

If the property of a person, who is neither an idiot nor a minor, is enjoyed (by another person before his very eyes), the former's (complaint against the latter) shall be rejected[196] in a law-suit (*vyavahāreṇa*) and tke enjoyer of the property[197] will become the owner of the property in question.

D. V. adds: The insertion of the word *vyovahāreṇa* implies that due to the decision of the learned, the property in question certainly belongs to the

[196] D. V. misreads *bhāgam* for *bhagnam*.

[197] D. V. reads *dhanam* but Manu reads *dravyam*.

previous owner in accordance with the principle of *dharma* (i.e. *dharma-śāstra*). So it is settled that if a wealth (originally lost and subsequently discovered) is conclusively known to be the property of a person, other than a Brāhmaṇa, it can be appropriated by the discoverer but if not so (i.e. if it is proved to have originally belonged to a Brāhmaṇa), it shall be distributed among Brāhmaṇas. (If Brāhmaṇas and similar other persons themselves come upon such wealth,) they will take parts each of the entire wealth, after having informed the king of the discovery.

Nārada (*asvāmi-vikraya* VV.6*a* and 7*b*) has also said: A person, discovering a wealth, deposited underground by any other person, shall have to present it to the king and shall enjoy it only when given back to him by the latter. If not no reported (or presented), that person becomes a thief (i.e. shall be punished as a thief).

Yāj. (II.35*b*) has also laid down: The person, who has been accused of not having informed the king (of the discovery by him) of such wealth, should have to give it back (to the king) and should also be punished (by him).

D. V. adds: According to the author of the Mit., the punishment, referred to here, shall be according to the capacity (of the culprit). It seems that it shall be forfeiture of the entire property, as Viṣṇu (III.62) says: (The king) shall forfeit the entire property of the person, who has been convicted of the offence of not having informed the king (of the discovery by him of such wealth).

Here ends the second section on the topic of the *uddiṣṭa*-s (i.e. classes of offenders) in the chapter on miscellaneous offences.

MUKTAKA-VARGA (i.e. detached offences)
SĀHASA

Nārada (cf. *sāhasa* V.2) has thus classified *sāhasa*: A *sāhasa* is of five kinds, viz. murder, theft, molestation of other men's wives and two kinds of rude. ness (i.e. abuse and assault).

D. V. adds: This general classification (of *sāhasa* offences) carries the implication of their common attribute of having been committed openly. So in these offences the guard (of the property or person concerned) has not the absence of knowledge of their commission but such absence of knowledge *does* exist in a theft, which is, therefore, not to be classified within *sāhasa* offences, as the definitions of theft and *sāhasa* are mutually exclusive. Moreover, robbing a person of his wealth even before the very eyes of a guard, if done surreptitiously, becomes a theft and kidnapping or enjoying another

man's wife, even if not done in the presence of a guard, turns out to be a *sāhasa*.

So Nārada (*sāhasa* V.1), after having admitted the above two contigencies, has finally discarded the above distinguishing characteristic of a *sāhasa* by defining it in the following manner:

Whatever act is done by persons, proud of their prowess, with force (*sahasā*), is called a *sāhasa*, as the word *sahas* means 'force' itself (the word *sahasā* being the third case-ending singular form of *sahas* and hence meaning done 'with force').

So due to this derivative definition of *sāhasa*, its component element is, according to Nārada's opinion, 'commission with force' only.

Nārada (*sāhasa* V.12*b*) has made this clearer by the following (further) statement: An injury (to a person), committed with the use of force, is a *sāhasa* and that, perpetrated with the practice of fraud only, is theft.

D. V. adds: The word *chalena* (i.e. by fraud) means 'without the knowledge of the guard'. By the above definition theft becomes divided into two classes, viz. thefts and similar other offences, not specifically defined, when committed with the employment of force, turn out to be *sāhasa* crimes, which call for heavier punishments and not those, committed secretly. The author of the Mit. has, therefore, said that the punishment of these offences should be according to the manner of their commission.

Bearing this in mind, Yāj. (II.72*b*) has mentioned (theft and *sāhasa*) separately as follows: All kinds of witnesses (are admissible) in (cases of) kidnapping, theft, rudeness (i.e. abuse and assault) and *sāhasa* crimes.

D. V. adds: Though according to the above enumeration, offences, which are not technically *sāhasa* crimes (according to the five-fold division of Nārada), become so and are consequently punished similarly .

As Bṛhaspati (XXII.3) has laid down: That offence (i.e. theft) is known to be of three kinds, viz. low, medium and high and the fines of the first, middle and highest amercements are to be correspondingly imposed on the offenders (of those three kinds) and also in consideration of the thing (stolen).

D. V. adds that the above text has already been quoted by it in the topic of miscellaneous thefts (p. 141 of D. V.).

Nārada (*sāhasa* VV. 7-8) has also said: The punishments for that offence depend on the very kind of it. The punishment for such offence of the first (i.e. pettiest) kind is (a fine) up to one hundred (*paṇa*-s), while persons, conver sant with law, have laid down (the fine) up to fine hundred (*paṇa*-s) for the medium kind. The (pecuniary) punishment up to one thousand (*paṇa*-s) is intended for (the commission of) the highest kind (of this offence) or death sen-

tence, forfeiture of the entire property, banishment from the city (or territory), imprinting (the person of the offender) with characteristic marks and the mutilation of his offending limb are the several punishments, prescribed for this highest kind of *sāhasa* crime.

D. V. adds that according to the Mit., the above punishments of death sentence etc. are to be inflicted either singly or collectively (on the offenders).

After having prescribed the imposition of a fine, equivalent to the value of the thing, destroyed or stolen, Bṛhaspati (XXIII.8*a*) has laid down: The kings may (also) impose a fine, double the value of the thing (so destroyed or stolen) in consideration (of the special circumstances) of the offender.

Yāj. (II.230*b*) also says: The (pecuniary) punishment (for such offences) is to be double of the value (of the thing concerned) and this is to be increased to four times such value in cases of concealment (of the thing).

D. V. adds: From the prescription of the special punishments, laid down here, it appears, according to the author of the Mit., that the general punishments, such as the first amercement (prescribed above) relate to offences other than theft.

Bṛhaspati (XXIII.8*b*) again says: The thief should be subjected to physical torture for stopping the repetition of the offence.

D. V. adds: The above prescription (of harsher punishment) is applicable to such thieves as cannot be restrained by the imposition of fines, owing to their repeated commission of this offence.

Manu (VIII.288-9) has also laid down: He, who destroys another person's articles (not specifically mentioned in the texts) knowingly or unknowingly, should be compelled to cause satisfaction (*tuṣṭim*) to the latter (by giving him the substitutes of the things, so destroyed by the former) and to pay also fines of the same values to the king. In cases of destruction of leather and vessels or objects, made of leather and other materials, such as pots of wood and stone, flowers, fruits and esculent roots, the fines shall be five times the respective values of the things concerned.

D. V. adds: The word *tuṣṭim* (satisfaction) implies 'with the substitution of the destroyed articles'. According to Nārāyaṇa, the words 'knowingly or unknowingly' have been added "to emphasise the proportion of the creation of such satisfaction'. and consequently the fine for the destruction, caused knowingly , is equal to the value of the thing destroyed, while that for the same offence, committed unknowingly, is half of that value.

'Vessels or objects, made of leather' are such things as shoes, drinking bowls etc. Things, made of wood and stone, are measures etc. and pitchers etc. respectively. According to the Ratnākara (p. 351), the first use of the

word *carma* (i.e. leather) is simply for the sake of emphasis. The prescription of punishment in all cases is in consideration of the possession or non-possession of merit and richness or poverty of the person, committing such *sāhasa* offences, the speciality or otherwise of the things (destroyed) and the gravity or lightness of the offences committed (by way of such destruction).

If it is said that the above paraphrase of the known conclusions regarding the non-seriousness of some offences is unnecessary, we say in reply that it is not so, inasmuch as theft is certainly a *sāhasa* crime but it may be committed in two ways, viz. with the use of force, pride, insensibility and fraud, where the punishment is heavier and without the use of force etc. Those kinds of theft, consisting of wicked activities, committed without the use of force but secretly (by reason of non-obstruction by guards), and hence classed as minor *sāhasa* crimes, also call for appropriate punishments. So those sages have laid down those texts, (relating to such minor *sāhasa* crimes,) in the chapter on *sāhasa*. The Kāmadhenu and other digests have accordingly quoted them in the corresponding chapters of those works. We have only collected those texts in the chapter on miscellaneous offences, as we have promised (in the very beginning of the present treatise) to divide it into specific chapters to set out the distinguishing features of several kinds of offences, according to our intended division.

Yāj. (II.224) has laid down the following punishment for throwing thorns and similar other objectionable things into (another man's) house: The person, who throws into (another person's) house things, which annoy him or bring about his death, are to be fined sixteen *paṇa*-s and the middle amercement respectively.

D. V. adds that the annoying things (*duḥkhotpādi*) are thorns and similar other objectionable things and the killing things (*prāṇa-haram*) include serpents etc.

Viṣṇu (V.110) has said in continuation of punishment: One, throwing tormenting things into (another man's) house, is to receive (the pecuniary punishment of) a hundred *paṇa*-s.

D. V. adds: The punishments to be inflicted here are in proportion to the gravity or otherwise of the annoyance effected. The word house (*gṛha*) here includes all those places, where offences like striking with thorns are possible to be committed in relation to persons staying confidently there and which, therefore include roads etc.

While commenting on the following text of Śaṅkha-likhita, laid down in continuation of the infliction of the alternative punishments of death and mutilation of limbs, "In defiling thoroughfares and liquids", the Ratnākara (pp. 353-3) has said that defilement of the thoroughfares can be effected

by sharp instruments and that of liquids by mixing them with poison. According to this interpretation, the punishments for the above offences have been made unnecessarily heavier (than ordinary penalties in similar cases of the commission of such offences).

So an iron rod, besmeared with poison or a hidden pit with an iron spike placed within it[197a] on the border-line of a water-course or on a cross-road, poisoned ghee or water are things, which are sufficient to cause (a pedestrian's death). Even when not actually causing such death, the placing of these things (on a public road) indicates the attempt to kill others on the part of those, who put them (in such places). So when these things, so placed, actually cause death of other persons, the man, who had earlier put them in those positions, should also be done to death but where such things simply cause excessive pain to others, the man's limb should be cut off. These are the alternative punishments for these offences.

Thus, in spite of the facts that serpents and other venomous reptiles cause invariable death and that the intention of killing others on the part of the thrower of such creatures into another man's house is to be naturally inferred from such acts of throwing, if no physical injury results from those dangerous creatures having been cleared away at once, the punishment, laid down by Yāj. (II.224), is to be inflicted on the wrongdoers.

On the placing of nasty matter on public roads, Manu (IX.282) says: He, who deposits nasty things except in distress[198] (*amedhyam anāpadi*) on a public road (*rāja-mārge*), shall be fined two *Kārṣāpaṇa*s and shall have to cleanse the road very soon.

Kātyāyana (cf. V.755) has thus defined a *raja-mārga* (i.e. public road): That is known to be a *rāja-mārga*, by which all citizens along with quadrupeds go unobstructed to their desired places (i.e. destinations).

D. V. adds: According to the commentary on Manu (by Kullūka), the word *amedhya* means 'ordure etc.' and that the word *anāpadi* implies 'except in distressed conditions'.

The same author (i.e. Manu IX.283) has provided some exceptions to the above general rule: (But) if a diseased person,[199] an old man, a pregnant woman or a child commits the above offence, they are simply to be served with an admonition (*paribhāṣaṇam*) but should have to clear the road of that nasty matter. This is the settled rule.

D. V. adds that the word *paribhāṣaṇaṃ* means "such verbal punishment as 'Ḍo not do so again'."

[197a] D. V. reads *Kacchapikā*, which should be *Kacchaṭikā* meaning 'on the borderline of a water-course'.

[198] D. V. misreads *amedhyam-ānāpadi* as *amedhya-malādikam*.

[199] D. V. misreads *āpadgato S thavā* as *āpatkṛte yathā*.

Viṣṇu (V.106-7) also says: (A fine of) one hundred *paṇa*-s (is to be imposed on a person) for the deposit on the road or near a garden or a reservoir of water of unclean (i.e. nasty) excretory matter. The offending person shall have to remove it.

Kātyāyana (V.758) has laid down: He, who defiles a tank, a garden or a flight of steps (to a tank or a river) (i.e. a *ghāt*) with a nasty thing (i.e. ordure), shall have to cleanse that place of the filth and shall also be punished with the first amercement.

In continuation of punishment, Viṣṇu (V.108-9) further says on the destruction of houses, huts and other places of residence: The destroyer of houses, huts etc. shall be punished with the middle amercement and shall have to repair them. (The above text with the name of Viṣṇu, affixed to it, has been wrongly repeated by D. V. on the next page.)

D. V. adds that the above punishment is concerning the major destruction of those places of residence.

Yāj. (II.223) lays down the following punishments for almost similar (but less serious) offences:

In cases of loosening the bindings and damaging in some places of huts and cutting the huts into two portions and causing greater damages to them, the fines of five, ten, twenty and forty *paṇa*-s are to be imposed respectively.

D. V. adds: The above interpretations of the words *abhighāta*, *bheda*, *cheda* and *avaghāta*, used in the above text, are in accordance with those of the Ratnākara (p. 350). (Vācaspati) Miśra (V. C. p. 149) is also of the same opinion. But the Mit, has read *Kuddāla-pātana* for *Kuḍyāvaghātana* and *tad-vyayam* for *tad-dvayam* in the above text and explained in the following manner:

The respective punishments for loosening the bindings of and damaging or cutting into two the huts are five, ten and twenty *paṇa*-s. In cases of causing great damages, the cumulative amounts of the above three kinds of fines are to be charged. (The damager) shall also have to make over to the owner of the hut concerned the necessary expenses for its repair.

Halāyudha has also said: The fines of five, ten and twenty *paṇa*-s are to be respectively imposed for simple damage, somewhat greater damage and breaking into two portions, caused to a hut but the cumulative fine is to be ordered for its complete destruction. (The damager or destroyer) shall also be compelled to make good the loss to the owner of the hut.

The above two interpretations are also right, as they are reasonable. The Kāmadhenu has also read (like the Mit. and Halāyudha) *tad-dvayam* as *tad-vyayam*.

Kātyāyana (V. 809) says: He, who either breaks, fells down or shatters

a rampart wall (made of stones, bricks and similar other materials) or puts obstruction to the flow of water (running in a water-channel) shall be awarded the first amercement.

Manu (IX.289) also says: The person, who has broken walls or doors (*dvārāṇām*) or filled up ditches, should be immediately put to death (*pramāpayet*).

D. V. adds: According to Nārāyaṇa, the word *dvārāṇām* means 'the passages of doors'. Kullūka Bhaṭṭa in his commentary of Manu has read *pravāsayet* for *pramāpayet* in the above text and explained it as "should be banished from the country'. The two kinds of punishments for the breaking of a wall, (laid down by Kātyāyana and Manu respectively) are in consideration of its graver or lighter character. The duty of the breaker is also implied to have been laid down like that of the damager or destroyer of houses and huts, on equitable principle.

Yāj. (II. 232-7) has laid down the following punishments for sixteen kinds of offences such as transgressing the authority of one's superiors: Fine of fifty *paṇa*-s each should certainly be imposed on the following (five classes of offenders): The enrager and transgressor of the authority of one's own superiors (*arghya*), the chastiser of one's own brothers and wife, the non-deliverer of one's promised thing (*sandiṣṭasya*), the breaker of the seal of a closed house and the inflicter of injury on one's own servants, kinsmen and similar other persons (*sāmanta-kulikādīnām*).

Fine of one hundred (*paṇa*-s) each is the requisite punishment for the following (eleven classes of offenders): One, who cohabits with a widow at one's sweet will (*svacchanda-vidhavāgāmī*), one, even when cried against (*vikruṣṭo' nabhidhāvakaḥ*), does not run towards (the crying person), one, who shouts for nothing, a *Caṇḍāla*, who touches (the members of) the superior (*uttamān*) (castes), one, who partakes of the meals, (served) in the religious rites, meant for gods and fathers of the Śūdra recluses, one, who swears by the utterance of improper words, unworthy persons, such as Śūdras, doing acts (such as accepting gifts), unfit for them, one, who destroys the masculinity of trees and smaller animals, one, who cheats persons in connection with common property, the destroyer of the phōētus of a female slave and the mutual deserter of one's own father, sons, sisters, brothers, spouse, teacher and pupil, when not degraded.

D. V. adds the following lengthy comments:

The word *arghya* means 'fit for *arghya* i.e. respectful offering), such as the teacher.' According to the Mit., the word *sandiṣṭasya* means 'of a thing sent (by a person) as promised (by him).' 'The breaker of the seal of a closed house' includes persons, not authorised to do so. The servants (*sāmanta*),

spoken of, mean 'those servants, who reside in one's house or in one's fields'. *Kulikā*-s mean 'those born of the same family'. 'Similar other persons' means 'persons, belonging to one's own village and country'. (The injury, spoken of above in relation to such persons, may be done in the following ways:)

Kātyāyana (cf. V. 807) has laid down the following punishment for causing damage or destruction of things other than of (houses and) huts: The person, who causes a smaller damage or a greater damage or complete destruction of (valuable) things, shall be awarded the first amercement and the owner (of the thing so damaged or destroyed) should also be provided (by him) with a substitute of that thing.

Things, which are rendered unfit for further use by a slight injury, are such highly precious things as crystals. The punishment for all the above varieties of the offence is the same, (as prescribed in the above text of Kātyāyana).

Halāyudha has also said: The principle of the infliction of the same punishment (for the above-mentioned several classes of the offence), in spite of the gravity or lightness of the damage or destruction done in relation to the article in question, is acceptable,

D. V. adds that the damager or destroyer of those articles causes harm to their owners. But the same authority (i.e. Halāyudha) has interpreted the phrase '*apakārasya Kārakaḥ*' as 'their not well-doer' i.e. 'inflicter of damage etc.' (Vācaspati) Miśra (V.C. pp. 150-151), however, having read *ākārasya na* for *apakārasya* (*Kārakaḥ*), has interpreted the phrase as 'one, who does not call the above-mentioned persons such as owners, servants (on appropriate occasions).' 'One, who cohabits with a widow at one's sweet will', means 'one, who does so even when not appointed to do so.'

Viṣṇu (V. 118) has laid down: A person, when called for protection by another person, attacked by a thief or other miscreants, does not quickly run towards the latter (and thereby becomes an offender).

So Halāyudha has also interpreted the word *anabhidhāvakaḥ* (in the above text of Yāj.) as 'one, though being able, does not run (towards the person, crying for help).' But (Vācaspati) Miśra has read the above word as *anabhidhāyakaḥ* and explained it as 'one, who does not respond (to the cries of that person.' (V. C. p. 151).

The word *uttamān* means 'Brāhmaṇas and members of other superior castes'. The 'Sūdra recluses' are such as '(the Jainas) of the Digambara sect and members of similar other heretic sects'. 'Swearing by improper words' implies 'statements such as "I shall then cohabit with my own mother" The text of Viṣṇu (V. 118) viz. 'one, who swears when not called upon to

do so', may also be accepted as the import of the above action, as such swearing is also unjustifiable.

The destruction of the masculinity of trees can be effected by putting a stop to its fructification by the injection of medicine into them. The smallness of animals is to be judged in relation to such smallness in comparison with (the bigness of) elephants and similar other animals. But Viṣṇu (V. 119) has only said in general terms, 'The destroyer of the masculinity of animals', which statement has been explained by the author of the Ratnākara (p. 277) as 'the cutting off of the testicles[200] of (male) animals'. 'The offence of the cheating of persons, by depriving them of common property' should have to be unscrupulously committed. The prescription of the fine of one hundred (*paṇa*-s) for a person, not running to (the rescue of) a crying person (having been attacked by another person), is to be interpreted as applying to the one of the crying person, not having been injured by that person. But if he has been so injured, the corresponding punishment should be as laid down in the following text of Viṣṇu (V. 73-74) :

When several persons take to assaulting (*nighnatām*) a single person, each of them should be awarded double of the punishment, prescribed (for such assault) and the persons, staying near or not running towards the crying person, shall also be similarly punished.

The fine of one hundred (*paṇa*-s) (should be imposed) on a Cāṇḍāla, touching (a member of a superior caste), even though so done unintentionally.

Viṣṇu (V. 104-5) has stated elsewhere: An untouchable, intentionally touching persons not to be touched by him, is to be put to death and if he does so in relation to a menstruating woman, he should be beaten with *śiphāas*.

D. V. adds: A *śiphā* is the eye of a tree. So (the latter part of the text) means that he should be thrashed with ropes, made of *śiphās*.

The punishment by the imposition of the fine of one hundred (*paṇa*-s) should be inflicted on persons like Śūdras for a single acceptance of gifts etc. But if they repeatedly do so, the following punishment, as prescribed by Manu (X. 96) should be inflicted on them: One, who, though being a member of an inferior caste, lives out of greed upon the avocations, laid down for members of superior castes, should be impoverished by the king and at once banished (from the territory).

D. V. adds: Halāyudha says that the phrase *adhamo jātyā* (i.e. a member

[200] Ratnākara reads *aṇḍacchedaḥ* but D. V. misreads it as *gudacchedaḥ* in the body of the text, though it contains the variant *aṅgacchedaḥ* in the footnote.

of an inferior caste), used in the above text, means 'a Vaiṣya (and a Śūdra)' and that if such a person, tries to eke out his living by following the occupations of a Kṣatriya (and of a Brāhmaṇa), he should have his wealth forfeited and he should also be transported from his territory (by the king). The Ratnākara is also of the same opinion. The same authority (i.e. Ratnākara pp. 369-370) has also said: The fine of one hundred (*paṇa*-s) and the forfeiture of the entire property for killing the phōētus of a female slave and that of a Brāhmaṇa woman respectively have already been laid down by Yāj. (II. 236) and so the following half-text of Yāj. (II. 277*a*): "The fine of the highest amercement is to be imposed for striking a person's body with a weapon and for killing a phōētus", is concerning the destruction of a phōētus of a woman, other than the above two classes.

The Mit. has also explained the above half-text after having supplied the phrase 'with the exception of the phōētus of a female slave and of a Brāhmaṇa woman' after the half-text. Though the punishment for killing the phōētus of a Brāhmaṇa woman has nowhere been specifically laid down, yet it ought to be included within the above exception on equitable principle. Though also the Mit., while explaining the text (of Manu (XI. 88*a*)) viz. 'After having destroyed the phōētus of an unknown woman', has added that an analogy of Brāhmaṇa murder is being shown here, yet the purport of this text is also indicative of the same import.

The instrumentality of chastisement in effecting that destruction of the phōētus is to be inferred from the location of the preceding word in the above text viz. *śastrāvapāte* (i.e. in case of striking with a weapon), from the necessary supply of the pharse *paragātre* (i.e. on another person's body) and also on the authority of the following another text:

Uṣanas says: The fines of the first, middle and highest amercements are to be imposed respectively (on the culprit), who creates difficulties in the delivery of a pregnant woman or who destroys the phōētus either by administering medicine to her or by thrashing her.

Viṣṇu (V. 113-4) lays down: The mutual deserters of father, son, teacher, a person to whose sacrifices one officiates as a priest and a Vedic priest (*ṛtvik*), when not degraded, (are punishable). One should not also discard them (even when they become degraded.)

D. V. adds: The clause 'even when they become degraded' is to be supplied after *tān* (i.e. them) (in the second sentence of the above text). *Tyāga* (i.e. desertion or discarding) means 'not offering them the necessary welcome etc.' and *atyāga* (i.e. non-desertion) implies 'holding conversation etc., though apparently prohibited, with them'.

The fine of one hundred (*paṇa*-s), (laid down in the above text of

Yāj.) is for mutual desertion by learned men but the fine of six hundred[201] (*paṇa*-s), as laid down in the following text of Manu (VIII. 389), is to be inflicted on learned persons, who intentionally desert either of the above classes of relations:

Neither one's parents, nor one's wife or sons deserve to be deserted. Any one, doing so, when they are not degraded, should be fined by the king six hundred (*paṇa*-s).

The fine of two hundred (*paṇa*-s), as laid down in the following text of Śaṅkha-likhita, applies to an intentional desertion by either of the parties enumerated: One's own parents and all the blood-relations, possessing merits, are not fit to be discarded. He, who intentionally discards them, when not degraded, is to be get the infliction of the fine of two hundred (*paṇa-s*).

Viṣṇu (V. 91-97) lays down the following punishments on offences such as not allowing others to go (first) by a road:

He, who does not allow passage for persons, who are to be given priority in passage (on a road), is to be fined twenty-five *Kārṣāpaṇa*-s.[202] Those also, who do not offer seats to persons, who are to be so offered, who do not pay respectful tribute to persons, worthy of the same (also belong to the same category). Those, who transgress the claim of the neighbour Brāhmaṇas to be invited (in dinner) in their houses and those, after having invited such Brāhmaṇas, do not serve food to them or the latter, having given their consent (to partake of the dinner), do not do so, are to be fined a gold *māṣa*. The last ones are also to give to the inviting person twice the amount of food, (prepared for but not partaken of by them).

Manu (II. 138) also says: Priority of passage is to be given to the following several classes of persons:

A person, seated in a wheeled carriage, one, who has passed ninety-years in age, a patient, a person with a load, a woman, a *Brahmacārin*, who has just completed his Vedic studies and taken the purificatory bath, the king and a bridgroom.

D. V. adds: The word *daśamīsthasya*, used in the above text, means 'one who is above ninety years in age' and the bridegroom is 'one, who is on his way to marry (some body's daughter in the latter's house).' The above text is illustrative and includes such other persons as one's teacher, preceptor and superiors and all persons, more learned than the above person (who is to grant passage to such persons).

[201] D. V. misreads *ṣaṭ-śata-daṇḍo* as *śatadaṇḍo* (cf. Ratnākara, p. 356).
[202] D. V. misreads *Kārṣāpaṇa-pañcaviṃśatipaṇān* for *Kārṣāpaṇapañca-viṃśatim* (cf. Ratnākara, p. 357 foot-note).

The next two other classes of persons, (in the above-quoted text of Viṣṇu), such as he, who does not offer seats or pay respectful tributes (to worthy persons), along with the first-mentioned one, i.e. he, who does not grant passage (to several classes of persons), are guilty of an almost equal offence and so the latter two classes also deserve the same amount of fine of twenty-five (*Kārṣāpaṇa*-s). The fine of a gold *māṣa*, (laid down for the just following three other classes of offenders in the same text of Viṣṇu in connection with invitation to dinners) may alternatively be imposed on the just preceding two classes of offenders, as the offence of the latter is equal in nature with those of the following three others. The refuser of invitation, offered by a neighbour Brāhmaṇa, is to be such as one, who permanently resides in his own house but refuses such invitation without anything having gone wrong with the inviter. In continuation with the imposition of the fine of one hundred (*paṇa*-s), the following statement of Manu (cf. VIII. 275),[203] concern as it does with respectable persons such as one's teacher, is not conflicting (with the just quoted previous text of the same author.)

Manu's statement: Not giving passage to one's teachers etc.

Manu (VIII. 392) further says: The Brāhmaṇa, who does not feed one's immediate and almost immediate neighbours, who are fit to be invited in a festivity, in which twenty Brāhmaṇas are being fed, should be fined a *māṣa*.

D. V. adds: The above offence, regarding the non-feeding of the above two classes of persons, concerns Brāhmaṇa inviters only, as Nārāyaṇa has said that the insertion of the word *vipraḥ* within the text implies that a Kṣatriya, doing so, incurs no guilt.

The same authority (i.e. Manu VIII. 393) has further said: A *Śrotriya*, who does not offer dinner[204] to another meritorious *Śrotriya* in auspicious festivities (*bhūti-kṛtyeṣu*), shall have to give twice the amount of food (*tad-annam*) and also pay the fine of a gold *māṣa*.

D. V. adds: A *Śrotriya* is a person of good religious practices[205]. Kullūka Bhaṭṭa in his commentary on Manu has said that such another *Śrotriya* should happen to be a neighbour or almost a neighbour (of the former *Śrot-riya*) and that the word *bhūti-kṛtyeṣu* means 'on such occasions as the celebration of marriage (in his house)'. The word *tad-annam*, meaning 'the amount of food to have been served (to the *Śrotriya*)' and twice that amount shall have to be made over 'to such unfed person', according to the Ratnākara (pp. 357-8) 'When such feeding has not been done' being implied here, this text is of the

[203] D. V. reads *panthānañ cādadānastu*, while Manu reads *panthānaṁ cādadad guroḥ*.
[204] D. V. misreads *bhūti-krtyeṣu bhojayan* for *bhūti-kṛtye-ṣvabhojayan*, thus negating the real sense.
[205] D. V. explains *Śrotriyaḥ* as *sadācāravān* (i.e. of good religious practices) but Kullūka interprets it as *vidyā-cāravān* (i.e. possessing learning and performing religious rites).

same import as the previously quoted text of Viṣṇu. The payment (as fine) of a gold *māṣa* is to be made to the king.

It appears that owing to the insertion of the adjectival phrase *viṃśati-dvije* (i.e. in which occasion twenty Brāhmaṇas are invited) in the former text of Manu, the meritorious *Śrotriya*, mentioned in the latter text of the same authority, means "a meritorious Śrotriya other than the inviting *Śrotriya's* neighbour or almost neighbour". Moreover, the *māṣa*, mentioned in the former text, is also to be taken as a gold *māṣa* on account of the context and similarity of the offence concerned. Also because such a neighbouring person, fit for being invited in such a dinner but not so invited, is also similar to a person, who, though worthy and hence invited, declines to accept the invitation, as spoken of by Viṣṇu, by reason of the equality of position of a blameless neighbour and a meritorious non-neighbour. The neighbourliness in the former, devoid of any blemishes, is the compelling reason for extending an invitation to him.

The following view of Halāyudha is questionable: The *māṣaka*, spoken of by Manu in the former text, is to be construed as a *silver māṣaka*, in view of the fact that Manu has specifically laid down the fine of a *gold māṣaka* for the offence of non-feeding a neighbouring *Śrotriya* in a festive accasion Because the contents of the latter text are too explicit to include the factor of neighbourliness into it, resulting in the negation of the difference of punishment and possession of merit itself by the invited person supports his being so invited in spite of his non-neighbourliness. It should not be argued that the insertion of the phrase *vimśati-dvije* in the former tzxt minimises the auspicious character of the occasion for dinner, as the phrase *bhūti-kṛtyeṣu*, inserted in the latter text, simply adds to its holy character. So it is to be said that in a more sumptuous dinner the omission of invitation to neighbourly *Śrotriyas* is a higher offence (than the two cases, already cited) and hence calls for heavier punishment. Even in a dinner, confined to twenty Brāhmaṇas only, there should be an increase of punishment for excluding the neighbouring (*Śrotriya*) Brāhmaṇas except for extenuating circumstances. But it should not be said that the fine of a gold *māṣa* is to be consequently imposed for not extending invitation to a neighbourly *Śrotriya* and a fine of a silver *māṣa* is to be ordered in other cases, as such decision will conflict with the following text of Yāj. (II. 263): A ferry-man, exacting land-tax (from a passenger) is to be fined ten *paṇas*. A similar fine shall be imposed on a person, not inviting the neighbouring Brāhmaṇas.

The above text is to reconciled[206] as referring to the case of a neighbouring

[206] D. V. unnecessarily adds *mama* (i.e. mine) before this sentence. It might have been *api* (i.e. also).

Brāhmaṇa, devoid of merits, on the authority of the following text of the Matsyapurāṇa, quoted in the Kāmadhenu:

'There is no exemption from the sin, (arising out of the dereliction of the duty) of feeding Brāhmaṇas.' So this latter text is in consonance with our explanation of the former text.

The punishment for the following four classes of offenders is a gold *māṣa*:

(1) One, who does not accept an invitation,

(2) One, who does not serve meals to invited guests,

(3) One, who, even after having accepted an invitation, does not actually partake of the meal offered, and

(4) One, who does not extend invitation (to worthy persons).

There is an additional duty (imposed on the host) of offering twice the amount of meal (to the aggrieved persons) in the second and fourth cases.[207]

So let there be the two-fold prescription of a gold *māṣa* and a silver *māṣa*, equivalent to ten *paṇa*-s, for the commission of the above offence in connection with neighbour Brahmanas in proportion to their possession of merits. Halāyudha has, however, said that fines of a gold *māṣa*, ten *paṇa*-s and a silver *māṣa* are to be inflicted on the defaulter in connection with very worthy, worthy and unworthy Brāhmaṇas respectively.

Viṣṇu lays down the following punishment for refusal of an offer of gift without any valid reason: A Brāhmaṇa, who is in the habit of accepting gifts and has been invited to receive one such but does not respond to the invitation without any valid reason, is to be fined eight hundred (*paṇa*-s).

D. V. adds that the above text finds fault with a person, who presents himself on (occasions of) gifts but shows his aversion to accept the offer of one such and that this fault is like that of uttering an abuse.

In continuation of the statement that a person, polluting a Brāhmaṇa and others, is punishable, Viṣṇu (V. 98-103) lays down: One, who defiles a Brāhmaṇa with uneatables, is to be fined sixteen gold (coins); and one, who does so with things, which cause loss of caste, is to be fined one hundred (gold coins); and one, who does so by (making him swallow) wine, is to be put to death. Halves and halves of halves (i.e. quarters) of the above several punishments are to be meted out to persons, convicted of the same offences in relation to Kṣatriyas and Vaisyas: But the fine of the first amercement is to be imposed on a similar offender in relation to a Śūdra.

D. V. adds: According to the Mit., the uneatables, spoken of in the above text, may be either 'mixed with food and drink' or offered, 'unmixed with

[207] D. V. wrongly reads *uttarayor* (i.e. in the last two cases), which should be *dvitīya-caturthayor*.

anything'. The uneatables include undrinkables also, on the authority of the following text of Manu:

After having made Brāhmaṇas or *dvijas* (i.e. members of the twice-born classes) eat an uneatable (food) or drink an undrinkable (liquid) etc.

Uneatable (and undrinkable) things are such as stools and urine and caste-destroying 'substances are such as garlic.' The corresponding uneatable (i.e. undrinkable) substance for a Śūdra is the milk of a tawny-coloured cow and the meat of the (five) forbidden five-clawed animals destroys his caste. "Fines of half of that (punishment)' (*tad-ardham*) means eight gold (coins) and fifty (gold coins) constituting the punishments for causing to eat unetables and caste-destroying substances respectively. The second *tad-ardham* implies (the fines of) four[208] and twenty-five gold (coins) for the above two offences respectively. (The first-mentioned fines) are to apply to cases involving good Brāhmaṇas and others only.

Yāj. (II. 296) has laid down the following punishment in the other cases: The fines for causing defilement through uneatables for (ordinary) Brāhmaṇas, Kṣatriyas, Vaiśyas and Śūdras are the highest, middle, first and half of the first amercements respectively.

In the following other text of Yāj. (II. 297) the three organs. (*triṇyaṅgāni*) are the nose, ears and hands, according to the author of the Mit. and others: manufacturers (and users) of spurious (i.e. imitation) gold and the sellers of forbidden flesh (*vimāṁsasya*) are to have their three organs cut off (*tryaṅga-hīnāḥ*) and should also be fined with the highest amercement.

The text of Viṣṇu, in continuation of the mutilation of one of the legs (of the offender), is also to the following effect: The seller of forbidden flesh also.

D. V. adds that the forbidden flesh (spoken of in both these texts) means 'such prohibited flesh as of jackals and similar other animals.'

The following other text of Viṣṇu (V. 174) lays down: The sellers of uneatables and unsaleable substances and the iconoclasts are to be punished with the fine of the highest amercement.

D. V. adds: The sales, referred to in the above texts, are not always condemned (i.e. disapproved) sales, otherwise the sales of the uneatables and other unsaleable substances for medicinal purposes will amount to crimes. So the above texts are to be interpreted in consideration of their applicability to good or bad purposes.

Viṣṇu (V. 173) again says: The partaker (*bhakṣayitā*) of uneatables and caste-defiling substances is to be banished (from the territory).

[208] D. V. omits *caturaḥ* (meaning 'four') here.

D. V. adds: The word *bhakṣayita* in the above text means 'the intentional eater', on the authority of the following text of Manu:

Those, who swallow (such uneatable food) of their own accord, are to be rendered devoid of property by the king.

Manu (IX. 290) has laid down the following punishment in *abhicāra* and similar other occult practices: If ill-wishing persons practise (on other persons) several kinds of *abhicāra* and many other (condemned) actions with the employment of roots, they are to be fined two hundred (*paṇa*-s).

D. V. adds: The word *abhicāreṣu* in the above text means 'in those Shastric practices, which involve the performence of sacrifices with hawks and in those other supernatural actions like writing with a needle, taking the dust of (a person's) feet, done towards an innocent person' and the word *mūlakarmaṇi* means 'those (hostile) actions, done by ill-wishers with the help of the roots of medicinal plants'. The phrase '*Kṛtyāsu Vividhāsu ca*' implies '*uccāṭana*' (i.e. making a person leave) his business by magic spells for causing diseases and other ailments (in the body of the person so treated with those practices) and unbecoming utterances (by the person, doing such) as 'I take your mother etc'. Kullūka Bhaṭṭa has said in his commentary on Manu that the above punishment (of two hundred *paṇa*-s) is to be inflicted in cases, where the person, so charged, survives the above practices but in cases, which end fatally, the punishment for murder is to be inflicted upon the authors of those crimes. In the sub-chapter of overt thieves, the word *mūlakarma* means 'conversion to one's views' (*vaśīkaraṇam*) and is employed to extort money (from customers) but here it means 'employment of roots (*mūla*) of medicinal plants' and the difference of the two topics in indicated by (the addition in the present text of) the word *anāptaiḥ* (i.e. by ill-wishers). But Nārāyaṇa has explained the word *anāptaḥ* as 'an unrelated person' and has said that the conversion to his own will is accomplished by the employment of such roots etc. and has added that if done against relations such one's husband etc., such action does not become condemnable.

Manu (IX. 286) lays down in polluting pure things etc: The fine of the highest amercement is to be inflicted on persons, causing pollution of pure things, breaking (articles) and piercing wrongly through jewels.

D. V. adds: Pollution (*dūṣaṇe*) means 'causing deterioration of the thing by contacting it with bad things' and breaking (*bhedane*) implies 'breaking brittle things'.

Yāj. (II. 301) prescribes the following punishment for concealing facts about one's (wife's) paramour:

One, who passes one's (wife's) paramour as a thief only, is to be fined five hundred (*paṇa*-s). But he, who, after having received from him a bribe,

sets him free, is to be fined eight times (*aṣṭaguṇīkṛtam*) the money, received as bribe.

D. V. adds: He, who, out of fear for the degradation of his own family, canceals the blemish of his wife and so passes her paramour as a thief only, is to pay the fine of five hundred *paṇa*-s. But if he lets him off after receiving a bribe from him, he is to pay a penalty of eight times the money received as bribe. This is the opinion of Halāyudha, Caṇḍeśvara [p. 361 of (Vivāda-) ratnākara)] and others. But (Vācaspati) Miśra (V. C. p. 154) has interpreted the word *aṣṭaguṇīkṛtam* in the above text as 'eight times of five hundred[208a], (*paṇa*-s).

Nārada (*ṛṇādāna* V. 67) has laid down the following punishment for selling things, not fit to be sold by a person:

A Brāhmaṇa, who has deviated from the right path by selling things, not fit for him to be sold (*avikreyāṇi*), should be replaced in the proper path (i.e. conduct of life) by the king with the infliction of a heavy punishment.

Though the above author has prescribed the just-quoted text after having written the following texts (*ṛṇādāna* VV. 61-63), yet many other things may be added to the list, provided in them, on equitable principle:

A Brāhmaṇa, who has taken up the occupation of a Vaiśya, should not sell the following things: Milk, curds, clarified butter, honey and remnants of honey, lac, caustic substances, (animal) fat, liquids, meat, rice, sesamum, linen, *soma* juice, flowers, fruits and stones, human beings, poison, weapons, water, salt, cakes, shrubs, hemp, silk, hides and bones (of animals), blanket, single-hoofed animals, buttermilk, containing a large proportion of water, (animal) hairs, oilcakes, vegetables, ginger and drugs.

So Caṇḍeśvara has explained the term *avikreyāṇi* (in the above earlier text of Nārada), as 'those things, the sale of which (by a Brāhmaṇa) has been prohibited in the works on *dharma-śāstra*'. The seller of such forbidden things should be corrected by the award of a heavy punishment (*daṇḍena bhūyasā*), i.e. the fine of the highest amercement, on the authority of the following text of Viṣṇu (V. 173) :

The seller of unsaleable articles should be awarded the fine of the highest amercement.[209]

Manu (IX. 285) has laid down the following punishment for breaking bridges etc.:

The breaker of bridges (*saṅkrama*), banners, (distinguishing) poles and

[208a] D. V. misreads *pañca-visinśatim-asṭa-guṇām* for *pañeaśatīm aśṭaguṇān*.

[209] The above text is a part of a bigger text of the sanme authority, quoted on p. 309 of D. V., a little above.

images of gods (*pratimā*) should have to repair them and also pay a fine of five hundred (*paṇa*-s).

D. V. adds: *Saṅkrama* means 'a collection of logs of wood and other things to facilitate passing over a water-course.' It is known as *sāṅka* (*Sāṅko*?) in ordinary language. A banner is 'the distinguishing sign of royal palaces, temples and other important places.' A pole is (a distinguishing sign) placed in markets and stables for elephants etc.' But Kullūka Bhaṭṭa in his commentary on Manu has explained it as 'the distinguishing sign, placed in front of tanks etc.' Nārāyaṇa has interpreted it as 'a pole for fastening banners of villages etc.' and has also explained the word *pratimā* as 'an effigy of a human being', as the sentence of death is the proper punishment for breaking an idol, which is also different in dimensions, as has been laid down (by Manu IX. 280) in the text, beginning with the word *Koṣṭhāgāra* (and containing the word *devatāgārabhedakān*). But according to D. V., as the above text (i.e. Manu IX. 280) relates to theft, so it should not be dragged into the interpretation of the present text (i.e. Manu IX. 285) (relating to breaking).

Kātyāyana has also said: He, who either steals or breaks or burns images of gods or breaks their houses (i.e. temples), shall be awarded the fine of the first amercement.

But Viṣṇu (V. 173) has said: The breaker of divine images should be punished with (the fine of) the highest amercement.

Śaṅkha-likhita have, however, laid down: In cases of causing destruction of idols (of gods), parks, wells, small bridges, banners, big bridges and *nipānas*, the breaker shall have either to reconstruct or to repair them and shall also receive the punishment of (the fine of) eight hundred (*paṇa*-s).

D. V. adds: A *nipāna* is a reservoir of water, constructed near a well for drinking water by cows and other animals. Reconstruction should be made in cases of total destruction and repair of the destroyed portion only in cases of partial destruction.

Viṣṇu (V. 15) has further said in continuation of the word *hanyāt* (i.e. should put to death): The destroyers of (big) bridges.

Yāj. (cf. II. 278*b*) hs also laid down: (The king) should plunge into water[210] the breaker of big bridges, after having tied him with a slab of stone.

D. V. adds: The alternative punishments of the fines of the highest and other amercements and also of that amounting to five[211] hundred (*paṇa*-s) are to be meted out to an iconoclast in considerations of the worthiness or unworthiness or richness or poverty of such breaker of idol. But in the case

[210] D. V. reads (*setubhedakarañ-*) *cāṣu*, which should be °*cāpsu*' to fit in with the verb *praveśayet* at the end of the line.

[211] D. V. misreads *pañca-śatātmaka*° as *paṇa-śatātmaka*°.

of breaking a big bridge, the sentence of death shall be inflicted only in cases of major destruction of the same. In other cases (i.e. not involving major destruction), the punishment, laid down by Śaṅkha (-likhita), should be inflicted.

Manu (IX. 281 and 279) has laid down the following punishments for the breaking etc. of tanks:

He, who steals (*haret*) the water of a previously excavated tank (*pūrva-niviṣṭasya*) or breaks (*bhindhyāt*) the entering passage of water in such a tank, shall be fined the first amercement. But the breaker of a tank shall be put to death (by immersing him) into water or by strangulation (*śuddha-vadhena*) or shall be compelled to repair the tank and pay a fine of the highest amercement.

D. V. adds: The word *pūrva-niviṣṭasya* means '(of a tank), already existing, (having been excavated)[212] for bathing, drinking and similar other purposes.' The verb *haret* means, according to Nārāyaṇa, 'conducts it to a tank, situated near (his residence)'. But Kullūka has read *bandhyāt* for *bhindhyāt* and explained the word *taḍāga-bhedaka* (i.e. breaker of a tank) as "the destroyer of the entire amount (*kṛtsna*) of water of the tank by[213] creating barriers to the entrance of water into it." Nārāyaṇa has, however, interpreted the above word (i.e. *taḍāga-bhedaka*) as "he, who effects the passing away of the water outside the tank" and has not added the word *kṛtsna* (i.e. entire) to the (*implied*) word 'water' in the former word. According to the Ratnākara (p. 364), the word *śuddha-vadhena* (lit. by pure death) means 'by choking the throat[214] (of the culprit), outside water (i.e. not by plunging him into water)'. But Nārāyaṇa has explained the above word as 'by decapitating (him)', as putting to death by the mutilation of the hands and fingers is an impure (*aśuddha*) form of death, as it causes pain (to the body of the culprit). The same author has also said that all the above-discussed punishments are for intentionally committing those offences, while unintentional commission of the same entails the thorough repair of the damaged tank, followed by the payment of the fine of the first amercement, upon the offender. But Kullūka has read *yad vā'pi* for *tac-cāpi* (i.e. that also) and has expressed the opinion that if the offender repairs the tank (so destroyed), he shall then have to be fined with the highest amercement only.

Śaṅkha-likhita have further said in continuation of the alternative punish-punishments of death and mutilation of the limbs: For breaking (i.e. destroying or damaging) a *vāpī*, a *taḍāga* and an *udapāna*.

[212] D. V. reads *snānapānādyu-payuktasya* as °*dupa-yuktasya*.
[213] D. V. misreads °*bhedādinā* for °*bandhādinā*.
[214] D. V. misreads *nālībandhādinā* (read in its footnote) or *galanālibandhādinā* (read by Ratnākara) *as gaṅgātira-tvādinā*.

D. V. adds: In cases of stealing (i.e. diverting) the water of a *taḍāga* for self-prescrivation and similar other purposes, (the punishment is the fine of) the first amercement. In doing so in respect of an inferior (i.e. smaller or less useful) *taḍāga*, mutilation of limbs is the proper penalty. But if the offence is committed regarding the entire quantity of water, contained in a good (and highly useful) *taḍāga*, the extreme penalty of death (should be meted out to the offender). That imposition of the sentence of death may be either simple or attended with tortures (*vicitra*) in consideration of the superiority (and utility) of the *taḍāga* in question. Such different punishments may also be prescribed in proportion to the gravity of the offence committed (in that bad action) or in consideration of the presence or absence of motive in it. Option between sentences of simple and complicated death may also be exercised in consideration of the comparative (size and position of) the reservoir of water, so damaged. A *vāpī* is a receptacle of water ten cubits square, a *taḍāga* is one such more than hundred cubits square and an *udapāna*[215] is larger in area than that, according to the *Smṛti* of a foreign province.

The Devīpurāṇa says: O best of kings! A well is above ten cubits (in diameter), a *durga* is greater in area than that, a *vāpi* is larger in diamensions than the combined length of two rods, each measuring ten arm-lengths and a *taḍāga*, eight kinds of which have already been described by me, is ten times larger than a *vāpī*.

The Kapila-pañcarātra also says: A *vāpī* is hundred *dhanu*-s (i.e. four hundred cubits) square, a pool or pond is four times larger than that, a *dīrghī* (i.e. a small lake) should be made nine hundred (cubits) (in length) and three hundred in breadth, a *taḍāga* (i.e. a lake) should be thousand cubits square and a reservoir of water, ten thousand cubits square, is called a *sāgara* (i.e. a sea).

Yāj. (II. 278-9) has laid down the following punishments for administering poison, setting fire and similar other offences:

A woman, administering poison and setting fire (*viṣāgnidām*), killing (other) male persons and destroying or damaging big bridges, if not pregnant, should be immersed in water,[216] after having tied her throat with a slab of stone. But a woman, who administers poison and sets fire, kills her husband, superiors and her own offspring, should have her ears, hands, nose and lips severed from her body and then should be killed by cows (*gabhiḥ*).

D. V. adds: The Mit. has added the following comments on the above two texts:

[215] D. V. misreads it as *nipānam*, which is not only irrelevant here but also means a different thing, as has been explained above.
[216] D. V. reads *setu-bhedakarīñcaiva* but Yāj. reads °*ñ cāpsu*.

'The "administering of poison" (referred to in the second text) is mixing poison with food and drink for causing death of other persons (than her own relations) and 'setting fire" is doing so for burning villages etc. The word '*gobhiḥ*' indicates that (such a woman) is to be put to death by instigating unruly bulls against her.'

The woman, spoken of (in the first text), if not pregnant at that time, should be plunged into water with a slab of stone, tied to her throat, otherwise (i.e. if pregnant) she is to be put to death (after her delivery?) after the mutilation of her ears etc. The insertion of the same word *viṣāgnidām* in the begining of both the above texts does not amount to tautology, as the two texts contain two separate sentences. The mention of this word in the former text is to state the offence with the corresponding punishment for its commission against persons, other than her husband with the object of bringing about his death, as is evident from the word *puruṣaghnīm*, inserted almost after it. But the mention in the latter text is to state the commission of the same offence with the motive of causing her own husband's death, as is manifest from the word *pati* ... *pramāpaṇīm* (meaning 'killing thereby her husband and other relations), placed just after it. In both the above cases, the motives and corresponding crimes seem to be correlated together.

But the Mit. (and Yāj. also) have read *vi-praduṣṭām* for the first *viṣāgnidām* and the former has explained it as '*viśeṣataḥ praduṣṭām*' (i.e. specially wicked).

The feminine gender of the first *viṣāgnidām* is not meant to be taken literally. So a male person, convicted of the same offence, should be similarly punished. So the following statement in general terms of Śaṅkha-likhita viz. "Death or mutilation of limbs (is the punishment) for polluting liquid substances by mixing them with poison and other injurious things" holds good here.

Yama says: Prajāpati has said that persons, who throw fire towards any person, the murderers and their accomplices are to be punished with their bodies (i.e. put to death) etc.

D. V. adds: The offences, described above, are, in connection with persons, other than Brāhmaṇas, who are exempted from this punishment. According to the Ratnākara (p. 365), the punishments with their bodies are also in proportion to the gravity of the offences. This view is correct on the authority of the text of Manu (VIII. 286), beginning with the words viz. *manuṣyāṇāṁ paśūnañca*, quoted and explained by us in the chapter on assault (p. 258 of D. V.).

Yāj. (II. 282) says: One, who sets fire to a field of crops (*Kṣetra*), house, village, forest (*vana*), a *vivīta* and a threshing floor or cohabits with the

king's wife (i.e. the queen), is to be burnt to death by creating fire in a straw-mat (*kaṭa*).

D. V. adds: The Mit. has explained the word *Kṣetra* as 'filled with ripe fruits and ripened crops.' The word *vana* means 'a forest or a play-ground'. The expression *vivīta* means 'a tract of land, containing grass, meant for the cattle etc.' A *Kaṭa* means '(a mat) made of straws.'

Kātyāyana (V. 956*b*) has laid down the following punishment for looting the royal treasury and similar other things. The plunderers of the king's wealth are to be awarded various kinds of corporal punishment.

Manu (IX. 275) also says: Those, who plunder [217] the royal treasury or are inimically disposed towards him or collude with the (king's) enemy, are to be put to various kinds of corporal punishment.

D. V. adds: According to Kullūka's commentary on Manu 'are inimically disposed towards him' means 'flout his orders'. According to the Ratnākara (p. 366), 'colluding with the (king's) enemy' means 'destroying his own king's state by doing so' but according to Kullūka Bhaṭṭa, it means "aggravating[218] the enmity with the enemy king". Nārāyaṇa has, however, interpreted the above expression (*arīnām upajāpakān*) as 'those, being (secretly) connected with the enemies, destroy their own ministers'. The Mit, after having quoted the above text, prefacing it with the clause viz. "death is the proper penalty for offences like the looting of the royal treasury", has explained the phrase *vividhair daṇḍaiḥ* as 'by forfeiture of the entire property, mutilation of limbs and death proper'. But Kullūka in his commentary on Manu has said 'by the cutting off of the hands, tongue etc. in proportion to the gravity of the offences'.

The Matsyapurāṇa has also said (in similar terms as Manu, just quoted): The plunderers of the royal treasury, persons, inimically disposed towards the king and those, who benefit the enemies (of their own king) (at the cost of the king himself), are to be tortured with various corporal punishments.

Manu (IX. 232*b*) further says: (The king) should put to death those persons, who are friendly with the king's enemies (*dviṭ-sevinaḥ*).

D. V. adds: The word *dviṭ-sevinaḥ* means 'those royal servants, who are hostile to the king'. If in spite of the infliction of pecuniary punishment as a substitute for corporal punishment on a Brāhmaṇa, convicted of the offence of hostility to the king like robbing him of his treasury, no correction of conduct occurs in him, who persists in his bad conduct even in his next punishment of banishment or after coming back after banishment[219] (from a foreign

[217] D. V. misreads *Koṣāpahartṛṛśa* as °*hantṛṛśca*.
[218] D. V. misreads °*vṛddhi*° as °*buddhi*°.
[219] D, V. misreads *voivāsyād* as *vaijātyād*. Cf. p. 68 of D. V. for the correct expression.

territory), he is either to be relegated to life-long imprisonment or to detention up till the correction of his conduct, according to our conclusion, recorded almost at the end of the first chapter (of this work).

Manu (IX. 232) has laid down the following punishment for accusing the ministers:

The king should put to death the forgers of the royal documents, the accusers of the ministers, the murderers of women, children and Brāhmaṇas and those persons, who are friendly with the king's enemies. (The same as the quotation on p. 266 of D. V.)

D. V. adds: According to the Ratnākara (p. 369), the phrase *prakṛtīnāṁ dūṣakān* means 'the unwarranted fault-finders of the ministers'. (Vācaspati) Miśra (V. C. p. 160) is also of the same opinion.

Viṣṇu (III. 33-34) has also said: The master (i.e. the king), the ministers, the fort, the treasury, the punishment (i.e. the criminal law) and the friends of the state—all constitute the *prakṛti*-s. (The king) should put to death all those, who accuse them (unreasonably).

D. V. adds that the ministers are the best among the citizens (*śiṣṭa*). Śaṅkha-likhita have laid down on the conversion of women, who are not female slaves, into such ones, in continuation of his earlier statement viz. "sentence of death or mutilation of limbs": In handing over in marriage women, who are not female slaves, to the men slaves.

D. V. adds: The punishments of death and mutilation of limbs are to be meted out for such offence in consideration of the comparative worthiness or unworthiness of the offenders, convicted of this fault. It is a matter of outraging (the modesty of a woman) and so no fault arises if the woman is a consenting party to such marriage.

Yāj. II. 304) says on the proclamation of the king's (future) harm: The fine of eight hundred (*paṇa*-s) is to be imposed on the person, who injures both the eyes (of another person) or proclaims harmful news about the king and on the Śūdra, eking out his living by following the special avocations of a Brāhmaṇa.

D. V. adds: The phrase *rājadviṣṭādeśakṛtaḥ* (i.e. of the proclaimer of news, harmful to the king) means "of the proclaimer of such prophecies as 'The king shall die in the second year (from now)'."

The author of the Mit. makes the following comments:

That astrologer, who, though unerring in doing good to superiors (including the king), makes such injurious prognostication about the king as 'There will be dethronement of the king after the lapse of a year', is to be fined eight hundred (*paṇa*-s).

Yama makes the following statement in connection with a Brāhmaṇa:

Banishment (from the territory) is the appropriate punishment (of the Brāhmaṇa), who utters harmful things about the king.

Manu lays down the punishment for causing debilitated bulls and similar other beasts to draw carts: He, who causes young cows (*go-kumārī*) and other beasts, dedicated to gods and bulls, strong as well as weak (*ukṣāṇaṁ vṛṣabhantathā*), shall be fined the first amercement, which punishment will be increased to the fine of eight hundred *paṇa*-s (*aṣṭamam*), if death results (from the employment of such animals to that work).

D. V. adds: The word *go-kumārī* means 'a cow, attached to a bull' and the word *ukṣā* means 'an impregnating bull' from its having been derived from the root *ukṣa*, which means 'discharge of the (seminal) fluid'. The word *vṛṣabha* means 'a worn-out bull'.

Bṛhaspati also says in his topic on bulls: He, who causes tired, hungry and thirsty (bulls) to draw (carts or carry loads) in inappropriate times, is to be termed a *go-ghna* (i.e. a cow-killer) and he should be either finally got rid of (i.e. put to death) or awarded (some appropriate) punishment.

Kātyāyana (V. 789) also similarly says: He, who causes fatigued, famished and thirsty asses, bullocks, buffaloes, camels and similar other beasts of burden to draw (carts or carry loads) in improper times, shall be fined the first amercement.

On committing suicide, Angiras has said: The body of the person, who kills himself by taking resort to lightning etc., shall be besmeared with filthy substances but if he survives the above act of suicide, he shall be fined two hundred (*paṇa*-s).

D. V. adds that similar punishments will also logically follow such other cases, committed by means of other dangerous methods.

Manu has specified such other cases as follows: Those persons, who have survived their attempts to commit suicide by means of (drowning into) water, (jumping into) fire and hanging or have renounced the life of a recluse after having once adopted it or have escaped death even after swallowing poison or after infliction on their bodies of mild strokes of weapons, are also to be considered as "having relapsed into the old bad way of life" and should consequently be driven out of the common society.

D. V. adds: The previous prescription of the punishments like exile, imprinting (the person with characteristic marks) and driving to servitude, to be served out on the renouncers of the status of a recluse, relate to intentional commission of the above offences but here the offences specified are those, which have been committed due to incapacity to avoid them on the part of the offenders. So this present prescription does not stand in conflict with the previous prescription.

ON THE PUNISHMENT FOR USURPING THE WEALTH OF A CHILDLESS WIDOW (AND SIMILAR OFFENCES)

So Kātyāyana (V. 921) has laid down the following prescription in connection with the property, (inherited by a childless widow): A sonless (i.e. childless) widow, having kept unsullied the bed of her lord (i.e. husband) and practising the special duties (incumbent on a widow) and foregoing the pleasures of life, shall enjoy (her husband's) property up till her death, after which reversioners shall take it.

Manu (VIII. 28-29) has also laid down: The duty of protecting the wealth of the following classes of women (devolves on the king himself): Barren widows (who have been provided with wealth by their husbands), women, whose sons have predeceased them (and whose husbands are also dead), or those widows, who have no (near) agnates and cognates (to look after them) and diseased widows, if all such women happen to have remained chaste. If the relations (i.e. reversioners) of these women appropriate their wealth, while they are still living, the virtuous king should punish them as thieves.

D. V. adds: The wealth, which has accrued to these women after the death of their husbands, leaving no other heirs and that kind of *strīdhana*, which they might have received from their near and dear relations and which is technically known as '*saudāyika*', is the wealth spoken of here.

Kātyāyana (VV. 911-912) further says: Neither husband nor son, neither father nor brothers are competent to take or spend a *strīdhana* (i.e. woman's *peculium*). If any one of the above-mentioned persons forcibly enjoys this *strīdhana*, he shall have to pay it back with interest and shall also be fined. D. V. adds that the punishment, spoken of here, is to be a fine, equal in amount to that wealth, so enjoyed, as similar has been the prescription in earlier cases (of almost similar offences.)

PUNISHMENTS FOR THE ŚŪDRAS, CONVICTED OF TRANSGRESSING THE ESTABLISHED RULES OF CONDUCT

Manu (VIII. 272) and Nārada (*vāg*. V. 24) have laid down: The king should pour heated oil into the mouth and ears of a Śūdra, giving advice on *dharma* out of pride to Brāhmaṇas.

D. V. adds that the phrase *dharmopadeśam* (i.e. giving advice on *dharma*) means "doing so, after having learnt a fragment of *dharma*, with the words viz. "You should practise this way of religious observance etc." (cf. Kullūka's com. on the above text).

Bṛhaspati (XX. 18) has also said: The Śūdra, who indulges in giving religious advice, based on citations of the Vedas and shouting against Brāhmaṇas, shall be punished with the mutilation of his tongue.

Gautama (III. 3-4) also says: If he (i.e. a Śūdra) listens to the Vedas, his ears should be sealed with tin and lac and he shall get the punishments of the mutilation of the tongue and death for citing from the Vedic texts and carrying along with him (manuscripts of) the Vedas respectively.

Hārīta says: So in the case of his overhearing the chanting of the Vedas, both the ears of a Śūdra should be closed with tin and lead, liquefied together (*viplāvya*).

D. V. adds that Halāyudha has read *vidrāvya* for *viplāvya*.

Manu (VIII. 281) and Nārada (*vāg*. V. 26) have again said: A member of the (most) inferior *varṇa* (i.e. a Śūdra), if found to have sat along with (*abhiprepsu*) a member of a superior *varṇa*, should be banished (from the territory) after having marked his waist with characteristic figures and should also have a portion of his buttock chopped off.

D. V. adds that the word *abhiprepsu* (though derived from a desiderative root) has been used here in the ordinary sense of the root (*āp* with the prefixes *abhi* and *pra*) (meaning 'gets' (the seat)). (cf. Ratnākara p. 267).

Viṣṇu (V. 20) also says: If a person, sprung from an inferior caste (*avakṛṣṭajaḥ*) sits along with a person of a superior caste (*utkṛṣṭena*), he shall have his waist, imprinted with characteristic figures and shall be banished.

D. V. adds: According to the Ratnākara (p. 267), the words *avakṛṣṭajaḥ* and *utkṛṣṭaḥ* mean a Śūdra and a Brāhmaṇa respectively. But Nārāyaṇa has explained the above two words as '*kṣatriya* and others' and 'a member of a caste, superior to that of the offender' respectively. The marking on his waist is for Kṣatriya and Vaiśya offenders only but both the penalties, viz. marking on the waist and cutting off of a portion of the haunch, are to be imposed on a Śūdra, wishing to sit along with a Brāhmaṇa. The imprinting with characteristic figures should be made with heated iron rods and justifiably according to the appearance of the seat concerned. The singular number of the word *sphicam*, meaning 'a portion of a buttock' and used in the second text of Manu and Nārada above, is so intended by the above authorities and also on the additional authority of the Matsyapurāṇa viz. 'A portion of one of his buttocks should be cut off'. Kullūka Bhaṭṭa has prescribed this cutting off in such a fashion as not to kill the offender. But the last portion of the above second text of Manu and Nārada has been read in the Dharmakoṣa as '*meḍhram vā' pyasya kartayet*' (i.e. "or should cut off his generative organ").

Gautuma (II.3.5) has further laid down: The fine of one hundred (*paṇa*-s)

should be imposed (on a Śūdra or a member of any other inferior *varṇa*), who wishes equality (with a Brāhmaṇa or a member of any other superior *varṇa*) in seat, bed and speech and on the road.

D. V. adds that 'equality in speech' means 'speaking when the member of the superior *varṇa* is speaking' and 'equality on the road' implies 'going together.'

Āpastamba (II. 27.15) has also said: The punishment for claiming equality on the road, in bed and in seat is physical harassment. D. V. adds that the prescription of the fine of one hundred (*paṇa*-s) in the just previous text (of Gautama) should be applied to wealthy Śūdras only.

Kātyāyana (V. 957) has laid down: The sinful (*pāpam*)[220] Śūdra, who, after having once taken up (*pravrajyā*), the last stage of life (i.e. *sannyāsa*) and engaged himself in the muttering of prayers and performance of sacrifices, forsakes that mode of life, shall be punished with the sentence of death or twice the amount of fine, fixed for commutation of the extreme penalty.

D.V. adds: According to the Ratnākara (p. 661), the word *pravrajyā* means 'the adoption of the later or last[221] stage of life'. Though the adoption of this stage has not been recommended for a Śūdra in the Vedas and Smṛtis, yet if a Śūdra, after having once taken it up in accordance with the prescription of the Śaiva *tantras*, renounces it, he is to be considered as *pravṛajyāvasita* (i.e. a deviator from the later or last stage of life). The duties, laid down (in the corresponding sacred books) for the Śaivas[222] and followers of other (heretic) faiths, even though not prescribed in the Vedas and Smṛtis, should be upheld by the king.

Yāj. (II. 304*b*) has also laid down: A Śūdra, earning his living with the *insignia* of a Brāhmaṇa (*Vipratvena*), should be fined eight hundred (*paṇa*-s),

D. V. adds that the word *vipratvena* means 'with the sacred thread and other *insignia* of a Brāhmaṇa'.

D. V. adds the following comment of the author of the Mit. on the above half-text of Yāj.:

The punishment in the shape of a fine of eight hundred (*paṇa*-s) is to be inflicted on the Śūdra, who takes up the *insignia* of a Brāhmaṇa, such as the sacred thread, for (enjoying the privilege of) dining in a feast, (meant for Brāhmaṇas only). When a Śūdra does so assume the dress of a Brāhmaṇa for participating in a *Śrāddha* feast, the portion of his body, from which the sacred thread is slung, should be stamped with a heated rod—this punish-

[220] D. V. misreads it as *pādam*.
[221] D. V. misreads °*uttarāśrama*° (i.e. the later stage of life) as *caturāśrama*°, which might have been *caturthāśrama*.
[222] Ratnākara reads *śaivādi-dharmāḥ* but D. V. reads it as *bauddhādi-dharmāḥ* (i.e. the duties of the Buddhists).

ment, as laid down in another Smṛti, should be followed in such cases. But if he does so for earning his livelihood, he should be put to death on the authority of the following text of Manu (IX. 224*b*) :

(The king) should put to death Śūdras, convicted of having adopted the *iusignia* of a member of the twice-born class, (i.e. pre-eminently 'of a Brāhmaṇa')

PUNISHMENT FOR CUTTING TREES

Kātyāyana (V. 793) has laid down the following punishment for cutting trees etc: The settled rule is that the corresponding punishments, to be inflicted for damaging or destroying all kinds of big trees, are in proportion to their comparative utility.

D. V. adds: This general rule applies to those kinds (of trees) for (damaging or destroying) which no specific punishments have already been prescribed. So in case of wanton cutting of ownerless trees, a nominal punishment is to be inflicted on the cutter. But for doing so in respect of trees, having owners, the making over either of a substitute of the tree, so cut down, or its price to the owner of the tree concerned should be done. This has been discussed and settled in the present treatise earlier and should be looked for in that portion.

Yāj. (II. 227-9) further says: The corresponding punishments for cutting down the branches, the joints (*skandha*) of the branches with the main tree and the roots (*sarva*) of those trees, from the branches of which further branches come out (*prarohiśākhinaḥ*) and the shade-giving (*upajīvya*) trees are twenty (*paṇa*-s) and the successively twice the above amount, such as forty and eighty *paṇa*-s. The trees, growing on homestead land and on the boundary of cremation grounds, in holy places and temples and those, which are conspicuous (*viśruta*) for their size, if so cut down, shall entail twice the above (three kinds of) punishments. But halves of the prescribed punishments are to be inflicted, if such injury is caused by anybody to the above-mentioned parts of the bushes, bunches of flowers, shrubs, creepers, waving tendrils, annual plants and *vīrudha*-s.

D. V. adds the following comments: The *prarohiśākhinaḥ* (trees) are such as the banyan tree. The *upajīvya* (trees) are those, the shades of which are utilized, such as the mango tree. The word *sarva* means the 'roots'. The *viśruta* (trees) are such as the *butea froudosa*. The *gulmāḥ* are those creepers, which do not become very long, such as those of *mālatī* (i.e. jasmine) flowers. The bunches of flowers (*gucchāḥ*) are such non-creepers with variegated colours as the *Kuruṇṭakas* (i.e. yellow or white *amaranth*). The shrubs (*Kṣupāḥ*) are those with small branches such as the *śākoṭaka*-s(?)

The creepers (*latāḥ*) are those which twist themselves around big trees i.e. parasites such as the vines and *Dalbargia Oujeinensis*. *Pratānāḥ* (or waving tandrils) are those, which have neither trunks nor sprouts and rise up straight such as the *Sārivās* (?). The *oṣadhi-s* (or annual plants) are those, which die after the ripening of their fruits such as the plaintain trees. *Virudha*-s are those shrubs, which, though cut down, sprout up in various parts (*vividhaṁ prarohanti*), such as the *tāla-kucya* (?).

Viṣṇu (V. 55-59) lays down the following in continuation of punishments (*daṇḍaḥ*):

The cutter of trees, yielding fruits, is to be fined the highest amercement. The cutter of flowering trees is to be punished with the fine of the middle amercement. The cutter of creepers, bushes and shrubs is to be awarded the pecuniary punishment of one hundred *Kārṣāpaṇa*-s, while that of wanton destroyer of grass shall be one (*Kārṣāpaṇa*). All these offenders (are to pay) to the owners of these trees etc. for growing them again.

D. V. adds: According to the Ratnākara (p. 283), the word *dadyuḥ* (i.e. 'are to pay') should be supplied after *tad-utpattim* (i.e. for growing them again). The Kāmadhenu has also read as such.

Vaśiṣṭha (XIX. 11) says: One should not ordinarily destroy the fruit-yielding and flowering trees, or (*vā*) he may do so for purposes of cultivation or for the performance of domestic duties and sacrificial rites.

D. V. adds: 'For purposes of cultivation' (*Karṣaṇārtham*) means 'for the construction of ploughshares for tilling the soil'. The insertion of the alternative conjunction *vā* (i.e. or) has been made to cover foreseeable and unforeseeable purposes (for allowing such cutting). The word *gārhasthyāṅge* means 'duties, connected with the house for the attainment of seen and unseen results, to be achieved for the benefit of the household premises and for sacrificial purposes'. (cf. Ratnākara, p. 284).

Here ends the third section on the topic of the *muktaka*-s (i.e. detached offences) in the chapter on miscellaneous offences.

VIVĀDA-PADĀNI (i.e. titles of legal disputes)

Manu (VIII. 4-7) has laid down on this topic: The first of these (i.e. *vivāda-padāni*) is (1) the recovery of debt and the following seventeen others are included within them: (2) Deposit and pledge (3) Sale without ownership (4) Concerns among partners (5) Resumption of gifts (6) Non-payment of wages (7) Non-performance of agreements (8) Recission of sale and purchase (9) Disputes between the owner (of cattle) and his servants (10) Disputes regarding boundaries (11) Assault (12) Defamation (13) Theft (14) Robbery

and violence (15) Adutery and rape (16) Duties of man and wife (17) Partition [223] (*vibhāgasca*) (of heritage) (18) Gambling and betting. These eighteen titles have been recognised here as relating to legal disputes.

D. V. adds: As abuse and assult and similar offences, involving violence, have been separately discussed (by us), and as we have also included offences like 'non-performance of agreements'[224] in (the *uddiṣṭa-varga* section of) this chapter on miscellaneous offences and also because transactions like the recovery of debt are not of themselves crimes but become so as a result of denial of the debt etc. and that they do not thereby create commotion among the people, so topics such as 'sale without aownership' are only discussed below.

Manu (VIII. 197-8)[225] has laid down on this offence: If a person, not being the real owner of a property and not also being authorised by the real owner to sell that property, does so, the former, being thus a thief but posing as an innocent person, should never be cited as a witness (in a law-suit). If (such unauthorised seller of another man's property) happens to be a relation of the latter (*sānvayaḥ*), he shall have to pay (*avahāryo*) six hundred *paṇa*-s as fine. But if such a person happens to be a man, unrelated to the real owner (*niranvayaḥ*) and thus unauthorised (*anapasaraḥ*) to do so on behalf of the latter, he shall be branded as a thief and punished as such. One, selling a property, over which one has no ownership, (to any other person), after having mistaken it to have belonged to him (owing to his relationship with the proprietor himself), shall thus be punished (i.e. by the imposition of the above-mentioned fine). But one, who is in no way related to the real owner, doing so, shall be punished as a thief, as the offence, thereby committed, is intentional (no question of mistake having arisen in that case).

D. V. adds the following comments: The word *avahara* means "giving" and so the word *avahārya*, derived from it, means "shall have to give, i.e. to pay." Lakṣmīdhara, Graheśvara, Kullūka[226] and Harinātha are also of the same opinion. But Nārāyana and Caṇḍeśvara (Ratuākara, p. 104) have explained the above word as *daṇḍyaḥ* (i.e. shall be punished). This explanation is incorrect, as it creates a tautology with the word *damam* (i.e. punishment) (at the very end of this line). The word *sānvayaḥ* means 'related to the real owner and thus having [227] possible (partial) ownership of the property in question', such as his divided brothers even in his life-time. The word

[223] D. V. misreads *vibhāgaśca* as *vivādaśca.*

[224] D. V. misreads *samvid-vyatikramādeḥ* as *sannidhyati-kramādeḥ.*

[225] The last verse of the above three, i.e. that, beginning with *anena vidhinā śāsyaḥ*, not found in Manu.

[226] But Kullūka has explained *avahāryo* as *daṇḍanīyaḥ.*

[227] D. V. wrongly reads *tad-dravya-yogya-sambandhābhāvavān* for *°sambandhabhāvavān,*

niranvayaḥ implies 'a totally unrelated person, having no possible (partial) ownership'. Nārāyaṇa has, however, said that even if a person, related to the real owner, becomes an *anapasara*, by selling the property in inopportune time and in an inappropriate place, (i.e. he is also to be punished). But the author of the (Kṛtya)-Kalpataru has explained the word *anapasara* otherwise, viz. the word *apasara*, having been derived from the verb *apasarati*, which means 'goes to another person from the owner', is to be interpreted as "gift, purchase and similar other modes of transfer of property" and a person, having no authority to make those transactions in respect to a property, is called an *anapasara*. The earlier commentators (of Manu) such as Bhāguri and Medhātithi and the later ones as Kullūka Bhaṭṭa have interpreted the above word likewise. All the above (divergent) opinions, due to different readings of the text and different methods of its interpretation, are equally accptable, as all them are reasonable.

The following two interpretations of the author of the Ratnākara (p. 104) and of the authors of the Kṛtyasāgara and Smṛtisāra are questionable:

(Ratnākara's interpretation) : The word *apasaraḥ* means '(implied)authority to remove a wealth from the master's house by a person, related to the former'. A person, having no such authority but doing so of his own accord, is called an *anapasara*.

(Interpretation of the Kṛtyasāgara and Smṛtisāra) : The word *anapasaraḥ* means '*apalāyitaḥ*' (i.e. not absconding).

So the settled decision is: A person, related to the real owner, making a sale of the latter's property out of mistake only, is to be fined six hundred *paṇa*-s but an unrelated person, fully cognisant of his absence of ownership in a property, doing so, shall be punished as a thief. This punishment shall be inflicted on the unrelated person, if he himself makes the unlawful transaction, involving transfer of the thing (to an outsider) but if the former causes a third person to do so on his behalf, he shall get the additional punishment of the fine of six hundred (*paṇa*-s), according to the Ratnākara (p. 104).

Kātyāyana (V. 620) has laid down the following punishment of the person, posing as the owner of a lost property:

If the claimant of an article (alleged to be lost) fails to substantiate his claim of the lost property by (the testimony of) his kinsmen, he deserves to be punished as a thief in order to prevent (his taking of) undue advantage.

Yāj. (II. 171*b*) also says: (If a person, after having recovered a lost property) does not report the fact (of its recovery) to the king, he shall be fined the value of the one-fifth portion of such property.

Bṛhaspati (XII. 8*b*) has also said: If (the recovery of a lost property is)

not reported (to the king by a person, making its recovery), he shall have to pay a fine twice the value of that property.

D. V. adds: When a person, knowing full well that the property, recovered by him, does not belong to him, persists in claiming it as his own out of greed, the above punishment of twice its value will apply but only one-fifth of its value will be exacted from the person, doing so by mistake. It is thus clear that the above-cited text of Kātyāyana is concerning the excess of repetition of the offence.

Bṛhaspati (XII. 3-4) has laid down the following punishment for (some kinds of) purchasers (of articles): No fault arises (in a purchaser), if the thing has been purchased in exchange of the price, previously fixed by the (king's) supervisor (of prices of commodities). But a person becomes a thief by buying a thing fraudulently. The following kinds of purchase only become tainted with fault:

If it has been made within a house or outside the village, at night or secretly from a known bad person or by the payment of a lower price.

D. V. adds: The above texts have been cited and explained by the Kṛtyasāgara and Smṛtisara, after having been prefaced with the remark viz. "In some cases the purchase even from the real owner of a thing turns out to be illegal." D. V. concludes by remarking that the transactions in such cases also are forbidden just like sale without ownership.

So Viṣṇu (V. 166) also says: If a person secretly purchases something at a lower price, both the seller and the purchaser are to be punished as thieves.

D. V. adds: This prescription does not appear to be a happy one, as a seller, wishing to sell his commodity secretly out of fear of thieves and similar other wicked persons, may thereby be (unnecessarily) tortured. So the Dharmakoṣa has cited this text, after having prefaced it with the remark, viz. "If the purchaser knowingly (i.e. with the knowledge of its stolen character) buys on article (at a lower price), then he is also to be punished." But[228] the Kalpataru has not added this proviso before this quotation. The Kāmadhenu, the Ratnākara and other authorities have altogether omitted this text.

Nārada says: One, purchasing a thing from the recognised servant of the seller of that article (and not from the seller himself), becomes guilty of that offence (i.e. of the offence of illegal purchase).

Yāj. (II. 168*b*) also says: A person, buying a thing at a lower price secretly or in an inappropriate time (*velāhīne*) from an unworthy seller (*hīnād*), becomes a thief.

D. V. adds: The word *hīnād* means 'from a poor person, not possibly to be the owner of the commodity in question'. The word *velāhīne* implies

[228] D. V. reads *ataeva* (i.e. 'therefore') here, which should be *Kintu* (i.e. 'but').

'in a time, not usually fixed for transactions like (sale and) purchase'. So by purchasing at a lower price a thing from a poor or wicked person or from a servant of the seller secretly and in an inappropriate time, a person renders himself to be almost a thief and analogically deserves the punishment of the latter.

Yāj. (II. 172) lays down the following punishment of the owner (of a lost but subsequently recovered thing):

He, who, after having got back his stolen or damaged property from another person, appropriates it without having reported its recovery to the king, shall be fined ninety-six *paṇa*-s.

D. V. adds: The above punishment is for a person, who does not inform the king in the following words: 'This thing belongs to me. It was stolen by such and such person'. According to the Kṛtyasāgara and Smṛtisāra, the non-reporting to the king amounts to hiding a thief and thus flouting the orders of the king. This is also the view of the Kalpataru, the Ratnākara (p. 111) and other authorities.

Bṛhaspati (XX. 9-12) says: In suits without any (clear) means of proof (*pramāṇa-hīne vāde tu*) the king himself should discharge the duties of the judge in consideration of the comparative fault of the persons involved. When a commodity has been exposed for sale in the row of merchants within the knowledge of the royal officers and the residence of the seller of the commodity is either not known or such seller is dead, the real owner of that thing should take it back (from the purchaser, in case he has bought it) by paying him half of its price only. Both of them (i.e. the real owner and the purchaser) will thus lose half of the real price of the thing in such transactions, inasmuch as purchasing a thing from an unknown source is a fault on the part of the purchaser and not preserving it in safe custody (*cā' paripālanam*) is that of the owner. Both these facts have been pronounced by learned men as detracting from the actual price of a thing sold.

D. V. adds: The present texts (of Bṛhaspati) are concerning those cases only, where owing to the lack of vigilance on the part of the owner some person steals and sells his property (to some other person who thus buys a stolen property), as is evident from the insertion of the words *cā' paripālanam* [i.e. not preserving (it) in safe custody]. So these texts do not come into conflict (with the previous texts of other authorities). Thus, the present texts, beginning with the word *pramāṇahīne*, concern themselves with such cases, where good faith of the owner or of the buyer and in the price does not appear to exist as in an overt purchase. In the absence of all these factors, 'the decision of the king is the final authority', as laid down by Vyāsa, is to be relied upon. The phrase *sama-nyūnādhikatvena*

means 'in consideration of the comparative honesty or dishonesty of the persons involved', according to the Ratnākara (p. 109).

Nārada lays down on the resumption of gifts: The gifts, which are made by persons, afflicted with fear, anger, bereavement, and disease or made by them under co-ercion, as also those, offered as bribes or by way of joke or out of mistake or due to fraud (having been practised upon the donor), become null and void.

D. V. adds that the Mit. has explained a bribe as 'that amount of money, which is given to the persons in authority for the removal of the obstacles in the way of the accomplishment of the intended action."

Nārada himself has said on the topic of giving or promising to give bribes: The amount of money, previously promised by a person to be given to another person, should never be so given, if the intended action has not been accomplished. If, however, such money has already been given (and no benefit has been secured by its giver from its receiver), the latter shall be forced to pay it back and also be fined eleven times the above amount—so say the *Gārgīyamānava*-s.

D. V. adds: The fine of 'eleven times the amount' (*ekādaśa-guṇam*) is applicable to cases, where the bribe has been promised only but not yet paid. It may be said in pursuance of the above texts of Nārada that the bribe, if already paid, turns to nullity (i.e. becomes un-repayable).(?)

Kātyāyana (V. 650 and cf. V. 651) has laid down: If any amount of money has been promised (by any one) to be given (as bribe) to the person, who will show the former the following classes of persons, such as a thief, a robber, a man who has deviated from his usual livelihood, an adulterer, and a man of bad character, or one who will spread false reports for a person,, that money is not to be given, as it is a bribe only. (But if it has already been given), neither the giver nor the intermediary is to be held guilty but the receiver shall certainly be punished.

But it should be noted that a bribe, promised to be paid for receiving a benefit in return, shall have to be paid. If that has already been paid, that should not be taken back, as it serves the purpose of compensating for the benefit to be received in return.[229] So the Kṛtyasāgara and Smṛtisāra have cited the above texts of Kātyāyana by prefacing them with the following sentenees:

Money given for the accomplishment of any kind of work, is not termed a 'bribe'. It may be given (with impunity) in particular kinds of work, as explained by Kātyāyana (in the following texts).

Thus ends the fourth section on *vivādapada*-s (i.e. titles of legal disputes) in the chapter on miscellaneous offences.

VYAVAHARA-VIṢAYA-DAṆḌA (i.e. punishments, connected with judicial procedure)

Though the offence of *violating the order of arrest* (*āsedha-vyatikrama*, i.e. like modern 'jumping bail') has been mentioned in the previous section of *uddhiṣṭa-varga* (p. 263 of D. V., text of Nārada), yet it is being elaborated in the present section for reasons of relevancy.

Bṛhaspati (I. 141) says: The king should have that person brought (before him) (*āsedhayet*) by a warrant, bearing his real or by an officer of his own, against whom a complaint has been made (by another person) on the basis of facts or of threatened injury.

Nārada (I. 47 also says: The plaintiff should cause to be restrained (*āsedhayet*) the person, not waiting for a decision or frowning upon his statements and abusing him up till the issue of summons to and appearance of him (in the court).

D.V. adds that this restraint is of four kinds, as (the same authority) (I.48) has thus described them: These restraints in the form of arrest are of four kinds and may be concerning place, time, exile and action. The person, so restrained, should not transgress them.

D.V. adds: The Kalpataru has thus explained the following several kinds of *sthānāsedha* (i.e. restraint of place):

"You shall be punished in such and such a manner if you move away from this particular place or go to the village, eat or read there."

The Pārijāta and other authorities have also offered similar explanations. The Ratnākara has also said almost the same as the above explanation: "You are not allowed to go away from this place or reside in a distant place, to eat or do any other work." But the author of the Dīpikā has interpreted the term *sthānāsedha* to mean 'that very place in which the plaintiff (the accused?) is not to be kept', the term *Kālāsedha* to mean 'that place where he is to remain fasting', the term '*pravāsāsedha*' as 'the place where he is exiled' and the term '*Karmāsedha*' as 'the place where he is restrained from performing obsequial rites such as *śrāddha*.'

The same authority (i.e. Nārada) (I. 51) (the last line wanting in Narāda) has further said: The restrained person, if found to have transgressed the restraint put upon him within the time, fixed for the purpose, shall be punished. But the person, at whose instance a person has been restrained, shall be liable to be punished (by the king) if he has abused the power of restraint (*anyathā kurvan*) or if he has caused an innocent person to be restrained. This is the law.

D. V. adds that the phrase 'has abused the power of restraint' (*anyathā kurvan*) means 'by resorting to the beating of the restrained person'.

Nārada and Kātyāyana (cf. V. 106) have thus illustrated the above: He, who restrains (the defendant) with such condemned acts as causing the cessation of the normal activities of his several organs (of senses and actions) such as talking and breathing freely, is to be held guilty and not (the defendant) who breaks such restraint.

Nārada (I. 49, 52-54) has thus listed those persons, who are not to be put under restraint: A person, put under restraint while swimming across a river or passing through a dreary forest or situated in a bad region or in distress, shall not be held guilty, if he breaks the restraint, put upon him by another person. The following classes of persons should not be put under restraint and should not be consequently summoned by the king for that purpose:

A person, about to marry, a diseased person, one, about to make Vedic sacrifices, one, placed in distress, one, who has been complained against by a third person, one, engaged in the performance of the duties of the state, cowherds in grazing fields of the cattle, cultivators, engaged in cultivation (*śasyabandha*), artisans, engaged in their work, soldiers while fighting battles, minors, royal messengers, a person, about to make gifts, a man, who has taken up a religious vow and a person, situated in an awkward place.

Kātyāyana (Part of V. 110) has thus described *śasyabandha*: One should not make (the defendant) engage in the dispute, if he is a cultivator, ready to reap the crop, as also with the approach of the rains, from the beginning (of the sowing of seeds) to the harvesting (of the crops).

Artisans are of four kinds, as has been said in the following text (of this authority) (V. 632*a*): Apprentices, more advanced students, experts (in that craft) and teachers.

Vyāsa has also said: A person, engaged in meditation or about to commence a Vedic sacrifice, a pious person, a person in distress, one, who has taken up a religious vow and one, about to make gifts—all these persons are neither to be complained against in a lawsuit, nor to be put under restraint and consequently not to be summoned (by the king) for that purpose.

Kātyāyana has further said: A defaulter (in repayment of debts) (*Kāryātipātī*), one in distress and one, heavily engaged in festivities or in connection with administrative duties (are not to be summoned).

D. V. adds: The word *kāryātipātī* means 'one, whose lawsuit (for being a defaulter in repayment of a debt) is pending (before the court)'. The above (first) exception to the exercise of restraint is concerning cases of secured debts.

Yāj. has thus prescribed in other cases: A plaintiff, who has just lodged a suit (to the king), should never be put under restraint to depose in a disputed point of law. The person, who causes the restraint of such a person, not fit to be so restrained, shall receive the same fine for causing restraint (as is fit to be imposed on the losing party in the pending suit).

Kātyāyana (cf. V. 589, V. 100 and cf. V. 101) continues:

A creditor, who harasses a debtor, [228a] who claims investigation in a court, shall not only lose his claim but shall also be fined an equal amount of that claim. A person, who, having been summoned by the king (to appear before the court), though able to do so, flouts the summons, should be punished by the king in proportion to the gravity of his offence according to the legal prescription. The respective fines to be imposed upon him for cases of slight, middling and heavy causes, shall be fifty, one hundred as minimum and always at least five hundred (*paṇa*-s)

Vyāsa furnishes some exceptions to the above general rule: (In case of a person, residing) in a region, ravaged by foreign army or stricken with diseases or in the grip of a famine, the king should re-issue the summons and should not inflict punishment (on the person, failing to comply with his order by the first issue of summons.)

Yāj. (II. 243) says: He, who puts into prison a person, not to be imprisoned, who lets loose a person, fit to be put into prison and either imprisons or makes scot-free an arrested person, whose case is *sub-judice* (*aprāptavyavahāram*), shall be punished with the highest amercement.

D. V. adds that the word *aprāptavyavahāram* means 'a person, who has been brought (to the court) in connection with a suit, which has not yet been decided.'

[N. B.: This very word has been used in a previous text of Nārada (p. 334 of D. V.), enumerating the persons not to be restrained, in the sense of a 'minor' (who has not yet reached the age of making legal transactions and is hence exempted from all legal proceedings.)]

Viṣṇu (V. 195) lays down: If the person, who has been appointed (by the king for the detention of undertrial prisoners), releases a person, fit to be punished, he shall be fined twice the amount to have been imposed on the above person (if proved guilty) and if the judge realises an amount of fine from persons, not fit to be so fined, that pest of human society shall also be fined twice the amount, realised by him.

D. V. adds: The detention of litigants and undertrial prisoners follows from the rule viz. the plaintiff and the defendant and the complainant and the accused are to be kept in coustody till the hearing of the suit or of

[228a] D. V. misreads *ṛṇikam* as *bālakam*.

the case. It seems that there can be no doubling of the sentence of death, so in cases of releasing beforehand an arrested person, (who is subsequently re-arrested and) sentenced to death, the above releaser should be fined one hundred gold (coins), as the substitute[229] of the sentence of death and the convicted person should then be put to death.

Yāj. (II. 295*b*) again says: He, who lets loose an adulterer (*pāradārika*) and a thief, shall be punished with the highest amercement.

D. V. adds: The above text is concerning the release of[230] a stealer of petty things and of a *pāradārika* (i.e. an adulterer), who commits adultery with unsecluded female slaves, belonging to an inferior caste.

Nārada (II. 23) and Kātyāyana have laid down: If a person, who, not being a brother or a son or the father of another person and not also having been engaged by him (in a law-suit), uselessly deposes for him, he shall then be liable to punishment.

Kātyāyana (V. 92) has furnished exceptions to the above general rule: But slaves, menials, pupils, persons deputed and relatives, when they speak (on behalf of another person, their master etc.), shall not be punished but any other person than these (if meddling in a litigation) shall be punished.

Bṛhaspati (I. 142) lays down a special rule: Whether deputed or not deputed, a relation or any other person shall be allowed to depose in favour of the plaint (of the plaintiff) or of the reply (of the defendant) in the cases of a minor, an idiot, a mad man, an old man, a woman, a child and a diseased person.

Kātyāyana (VV. 93*a*, 94 and 95) has laid down another special rule: No representative (*prativādi*) (of the plaintiff or the defendant) shall be allowed in the trials of the following crimes where the man himself (*kartā*), the plaintiff or the defendant, should engage himself in the dispute: Brāhmaṇa-murder, drinking wine, theft (*steye*), cohabitation with one's superiors or teacher's wife (i.e. incest), murder, theft (*steye*), molestation of other men's wives, partaking of forbidden food, abduction and defilement of maidens, abuse and assault, counterfeiting of coins and measures and sedition.

D. V. adds: The word *prativādī* (though ordinarily meaning a 'defendant') here means *pratinidhiḥ* (i.e. a representative) and the word *Kartā* (though ordinarily meaning an 'agent') here means *abhiyuktaḥ* (i.e. the accused person) (But it really means here 'the plaintiff or the defendant.') According to the Ratnākara the second mention of the word *steya* is to emphasize the gravity of this offence. But D. V. says that in fact the first mention of this word is to be interpreted as 'theft of gold' (and not of other things of

[229] D. V. misreads° *pratinidhitvena* as° *pratineṣiddhena*.
[230] D. V. misreads *tyajyate* as *tajyate*.

inferior quality), as it has been classed with other offences, which are grave sins (*mahā-pātaka*-s) and such theft of gold is as sinful and heinous as Brāhmaṇa-murder, man-slaughter, cohabitation with one's teacher's wife and molestation of other men's wives; the second mention is in connection with 'theft of other things' (which does not amount to a grave sin).

PUNISHMENT OF ASSESSORS

The punishment to be inflicted on those persons (appointed by the king as assessors in law-suits), who, after having received illegal gratification (from either of the parties), pass wrong judgments in cases, has already been discussed (by us) in the section on 'overt thieves.'

On the apprehension of the receipt of such illegal gratification, Kātyāyana (V. 70) has laid down: The judge, if found conversing in private with either of the parties in a suit, not yet decided, is to be punished and also particularly the assessors (if they do the same).

The same authority (V. 79) has said elsewhere: When an assessor (*Sabhya*) speaks out his wrong decision (regarding a case) out of affection (for a party), or out of ignorance, greed (of money) or infatuation, he shall be punished, as he is then to be called an *asabhya* (i.e. unworthy to be a member of the court, alternatively meaning 'a savage').

Nārada (cf. I. 67) has laid down the following punishment (for such perverse assessors): Those assessors, who deviate from the path of law (*Smṛti*) etc out of either love (or affection), greed or fear, are to be punished severally by the imposition of fines, twice the amounts (to have been imposed) in connection with the suits (*vivādāt*).

D. V. adds: The particle *ādi* (i.e. etc.), added after *smṛtyapeta* (i.e. deviating from the path of law), includes '*ācāra*' (i.e. customs). The author of the Mit. has said: The word *vivādat* means 'than the fine, which should have been imposed on the plaintiff on his losing the case' and not 'than the money-value of the suit', as no pecuniary punishment (on the latter account) is inflicted on the unsuccessful complainant in (criminal) cases like kidnapping of women.'

Bṛhaspati (cf. XXII. 14) has said: All those assessors, who pronounce unjust verdicts (*anyāyavādinaḥ*), are to be banished.

D. V. adds: The above punishment is to be inflicted in those cases only, where (such unjust verdicts) charge the accused with the imputation of highly tormenting grave sins or cause loss of his livelihood, or, if we take the word *anyāyavādinaḥ* as, having been derived from the root *vad* with the addition of the *nini* suffix, added to substantives to indicate the usual practice (*śīla*),

meaning 'in the habit of pronouncing such unjust verdicts', that derivative interpretation also does not come into conflict (with the imposition of the severe penalty of banishment, prescribed here).

Again, in such cases where the defendant (i.e. the debtor) completely denies the borrowing of gold (coins) in several instalments and the plaintiff (i.e. the creditor) succeeds in proving his case in the lending of some instalments only, the decision of the assessors, based partly on the truthful statement of the plaintiff and partly on conjecture by way of ratiocination, becomes somewhat different from the (expected) true finding, the supervisors (i.e. assessors) of the suit do not become guilty.

So, after having said that 'ratiocination may also be resorted to in arriving at the truth of a case and should therefore be utilized wherever necessary', Gautama (II. 2.32) has laid down: So the king and the judge do not become reprehensible (in such cases).

On the topic of the utterance of doubtful statements (*sandigdhānāñca bhāṣaṇam*), listed above, Nārada says:

(The king or the judge) should give out his judgment or verdict, based on truth, after having made a full appraisal of the evidence in the suit. They should never pronounce judgments, not based on truth (thus arrived at) and the pronouncer deserves (the fine equal to) twice the amount (*dviguṇam*).

D. V. adds: The *dviguṇam*, spoken of here, is according either to the money-value of the suit or to the (pecuniary) punishment to be imposed on the losing party (in the suit).

The same authority further says: The amount of money, lost by a party (in a civil suit) on account of the fault of an assessor, shall have to be compensated for by the assessor concerned and a suit of the litigants, if finally settled, should not be re-opened (*na vicālayet*).

D.V. adds: The first part of the text means that the "money 'lost' (*naṣṭam*), 'i.e. given to the winning party', should be made over (by the assessor) to the losing party" and the second part means that 'the latter should not assail i.e. re-open the above judgment'. This is (our) interpretation in accordance with the text, as read in the Kalpataru, the Pārijāta and other works. But the Vyavahāra-dīpikā, following the Kāmadhenu, has read *pra-vicārayet* for *na vicālayet* and offered the following different explanation: "A suit, even when once decided by an untruthful assessor, should be fully decided again (*pra-vicārayet*)." Thus, according to this interpretation, this re-opening of the matter is the punishment for the erring assessor. This second interpretation is also right, as re-opening wrongly decided cases and (consequent or subsequent) punishing the previous judge and assessors have been laid down. But the Kṛtyasāgara has read the concluding portion as *na*

vicālayet and explained the phrase as 'should not disturb (the former judgment), only if not protested against by the plaintiff.'

Kātyāyana says on a similar topic: An (ignorant) person, who decides cases, following the earlier judgments of the judges and the assessors and also in the manner of their reasoning, renders himself liable to punishment (*tu sa daṇḍabhāk*).

D. V. adds: The above text is concerning a person, who has not been appointed as judge, such as Śūdras and other persons. But there is also a different reading viz. *na sa daṇḍabhāk* (instead of *tu sa daṇḍubkāk*), which former reading is relating to Brāhmaṇas and members of other superior castes, adept in *dharma* (i.e. practices) and *śāstra* (i.e. legal literature). So there is no material difference by the adoption of this latter interpretation also, as Bṛhaspati (I. 108*a*) has laid down: A person, conversant with *dharma* (i.e. legal practices), whether appointed (by the king) or not, may pronounce (judgments in law-suits) and also as Nārada (III. 2*a*), as quoted in the Ratnākara, says: A person, conversant with *śāstra* (i.e. legal literature), may pass his judgment (in a law-suit), whether he has been appointed (by the king for that purpose) or not. D. V. adds: Somebody has utilized the authority of the following text of Kātyāyana (V. 6 of K. Sup.) and accorded his approval to the cases of adjudication even by unappointed persons:

(Kātyāyana's test)

"Those, who, not having been appointed (by the king), engage themselves in the special duties of the latter and decide legal disputes, should be punished." (Opinion of that anonymous authority) "The above text is applicable only to the persons, devoid of the knowledge of the legal practices and legal literature only. So, where there is no apprehension of any miscarriage of justice by its administration even by unappointed persons and where the king either approves of such administration (of justice) with the general idea that such (unappointed) persons are discharging his (i.e. the king's) duties or overlooks their conduct out of compassion." The above author has invoked the authority of the above-cited texts of Bṛhaspati and Nārada, containing the words '*niyukto vā*', in support of his arguments.

PUNISHMENT FOR ACCUSING HONEST WITNESSES

Brhaspati (V. 21) says: If a defendant (*vādī*) accuses honest witnesses, summoned by the plaintiff, in spite of their being free from blemishes, he shall be awarded the same punishments (*tatsamaṁ daṇḍam*).

D. V. adds: According to the Ratnākara, the phrase *tatsamaṁ daṇḍam* means 'equal to the damages to be realised (from the losing party) in the suit.' Thus it means in (criminal) cases like abduction of women 'equal to the fine (to be imposed) on the losing party' as has been stated above, which the reader is requested to consult.

Kātyāyana also says: One should not accuse (a witness) with false charges, (*doṣeṇa*) for doing which the accuser becomes punishable or loses what he is going to establish.

D. V. adds: The word *doṣeṇa* (i.e. with charges or faults) means 'on the basis of already proved facts and not of facts to be proved.'

Bṛhaspati and Kātyāyana also say: But such accusations of witnesses by way of purging their already made depositions, on the basis of facts, well-known to the assessors or current among the people, may be allowed to be made by the assessors but not for correcting their future depositions (to avoid the possible faults).

The above two authorities have thus described the possible faults: The fault of *anavasthā* (i.e. improbability) arises, when the latter witnesses (i.e. witnesses of the defendant) are to prove the falsity of the former witnesses (i.e. those of the plaintiff), though the probable facts, supposed to substantiate that falsity, may be conjectured (by the assessors) beforehand, yet other facts may also be adduced by the latter witnesses.

D. V. adds: Where there is no apprehension of the arising of the fault of improbability (*anavasthā*) and other faults, (imputation of) such fault, even though to be substantiated, may be allowed. Thus, the imputation of impurity (i.e. falsity) on a witness, who, after having taken the oath of a witness, and having actually deposed in a case, has been afterwards attacked with a disease or assailed by another calamity, may be made (by an assessor) on equitable grounds. Otherwise, the defendant (*vādī*) may win his case by simply saying that the witness had an attack of highly tormenting fever on the previous night, in which case the fault of *anavasthā* (improbability) arises in pursuance (of the sanctity) of the oath, taken by the witness.

Kātyāyana (V. 379) further says: If any person accuses after the deposition the witnesses, who have not been found fault with beforehand and also cannot adduce any (proper) reason (for not proclaiming them at first), he shall be punished with the *pūrva-śāhasa*, D. V. adds that according to the Ratnākara the phrase *pūrvasāhasam* means *uttama-sāhasam* (i.e. the highest amercement) (and not the first amercement).

PUNISHMENT FOR PROCURING FALSE WITNESSES

Kātyāyana (V. 407) says: He, who cites false witnesses through the greed of

(winning) the cause, shall have his entire property forfeited (by the king) and should be made *nirviṣaya*.

D.V. adds: According to the Ratnākara, the expression *nirviṣayam* means 'debarred from lodging suits in (future) cases'. The above punishment relates, according to D. V., to the repeated commission of the above offence. In the first commission of the above offence, the following text of Yāj. (II. 81) is to be relied upon:

"The false witnesses and their procurer (*Kūṭa-kṛt*) are to be severally punished with twice the amount of the fine to be imposed in the case."

One, who cites false (*Kūṭa*) witnesses, is a *kūṭa-kṛt* (i.e. procurer of false witnesses).

PUNISHMENT OF FALSE WITNESSES

The topic of deposing falsely, after accepting a bribe etc. from the party, has already been discussed (by us) in the section of 'overt thieves'.

Manu (VIII. 120-1) has laid down the following punishments for deposing falsely out of greed (of money): If (such false evidence has been given by a witness) out of greed of money, he shall be fined one thousand (*paṇa*-s), if out of ignorance (*mohāt*), two hundred and fifty *paṇa*-s, if out of fear, twice the amount, involved in a fine of the middle amercement (i.e. $2 \times 500 = 1000$ *paṇa*-s), if out of friendship, four times the first amercement (i.e. $4 \times 250 = 1000$ *paṇa*-s) if out of lust, ten times the first amercement ($= 10 \times 250 = 2500$ *paṇa*-s), if out of anger, three times the next (*param*) (i.e. the middle amercement) (i.e. $3 \times 500 = 1500$ paṇas), if out of temporary loss of understanding (*ajñānāt*), two hundred (*paṇa*-s) and if out of infatuation (*vāliśyāt*), one hundred (*paṇa*-s) only are to be imposed on him as fines.

D. V. adds: The word *moha* means, according to Kullūka Bhaṭṭa[231] and other commentators 'perverse knowledge.' The Ratnākara has also explained the expression as 'wrong knowledge'. But the Kalpataru has interpreted it as 'absent-mindedness'. Though this authority and the Ratnākara have explained the term *param* as 'next to the (just-spoken) first amercement, i.e. the middle amercement', yet Graheśvara Miśra has interpreted it as the highest amercement i.e. one thousand (*paṇa*-s) (and thus *triguṇam param*, according to him, means three thousand *paṇa*-s). Nārāyaṇa Sarvajña has also meant the highest amercement by the word *param*. The word *ajñānam* means, according to the Kalpataru, 'temporary loss of understanding' but according to the author of the Mit., 'non-maturity of understanding.' The expression *vāliśya* means, according to the Ratnākara, infatuation due

[231] Not found in Kullūka's comment.

to the advent of youth' but according to the author of the Mit.,' non-generation of knowledge.'

Yāj. (II. 81) has laid down the following in cases of perjury, not arising out of the previously described causes such as greed:

The perjurers are to be punished severally by the fines of twice the values of the suits (*vivādāt*) but a Brāhmaṇa perjurer is to be simply banished (from the territory) (*vivāsyo brāhmaṇas tathā*).

D. V. adds: According to the author ofthe Mit., the word *vivādat* means in relation to 'the fines to be imposed on the losing party in a suit'. It seems that the punishment prescribed here is concerning suits involving (recovery of) debts only, as the laying down of an amount is in such (civil) suits (and not in criminal cases). The Kṛtyasāgara says that in all other cases (including criminal proceedings) the following punishments (as laid down by Kātyāyana) (vide p. 335 of D. V. above for this quotation) shall be inflicted:

In trivial cases (of perjury) a fine of fifty (*paṇa*-s) only, in medium cases (of such offence) that of one hundred (*paṇa*-s) and in most heinous cases that of five hundred (*paṇa*-s) shall always be inflicted.

The clause *vivāsyo brṇhmaṇas tathā* means that a Brāhmaṇa should not receive any other punishment except banishment. But members of other *varṇas* should be awarded this latter punishment over and above the fine, described above. Otherwise, the legally declared provision of extenuation of punishment for a convicted Brāhmaṇa will be rendered useless. This comparative immunity of a Brāhmaṇa offender is to be applied also to the previously cited texts of Manu (VIII. 102-1), beginning with the words *lobhāt sahasram* [i.e. a fine of one thousand *paṇa*-s for (perjury committed) out of greed], as the same author (VIII. 123) has, (almost just after writing the former two texts), laid down: A pious king should put to exile (*pravāsayet*) after having punished the members of the three (lower) *varṇas*, convicted of perjury, but should give the sentence of exile (*vivāsayet*) only to a Brāhmaṇa, convicted of the same offence.

D. V. adds the following lengthy comments:

The punishments, enumerated for perjury due to various causes such as greed (in the previously cited texts of Manu), relate to a single commission of the above offence but the present text (of the same author) concerns itself with the repeated commission of the offence. So, according to Kullūka Bhaṭṭa's interpretation (of the present text), the king should inflict the pecuniary punishments, recorded above and then banish the (convicted) members of the Kṣatriya and other *varṇas* but should only banish the Brāhmaṇa offender without imposing any such fines upon him. Nārāyaṇa is also

of the same opinion. But Govindarāja has said that (the king) should, after having fined them as such, should (once) make them naked [which is a far-fetched interpretationof the verb *vivāsayet*, derived from the root *vas* (to live), to mean *vāsas*, (i.e. 'wearing apparel').] Medhātithi has, however, explained *vivāsayet* as meaning *vivāsanam kuryāt* on the strength of his interpretation of *vivāsanam* as 'taking away his wearing cloth' or 'breaking his house'. But the Ratnākara has interpreted thz word just like Kullūka Bhaṭṭa.

The author of the Mit has made these remarks: The verb *pravāsayet*, (used in connection with the three other *varṇas*), means 'put to death', as the word *pravāsa* has been used in the Arthaśāstra in the sense of 'causing death.' Yet it should be variously interpreted as 'cutting off of the lower lip', 'mutilation of the tongue' and 'severance of life from the body' (i.e. putting to death) in proportion to the gravity of the offence of perjury committed. The present text is concerning repeated commission of the offence. The verb *vivāsayet* (used in connection with Brāhmaṇas only) means either 'turn him out of his own country' or '(once) make him naked', The latter sense is got by first resolving the verb *vivāsayet* into (*vāsaso vigato* vivāsas', (i.e. devoid of cloth) and then forming from it a causative verb, meaning *tam koroti* (i.e. making him devoid of cloth (*vāsas*)' by applying the sūtra *viz. ṇāviṣṭhavat prātipadikasya*, resulting in the elision of the *ṭi* portion (i.e. the ending vowel *a* in *vivāsa* here) and changing it into *vivās* (a newly formed root). Or, another interpretation may be suggested: The word *vāsa*, having been derived from the root *vas* (to live) in the sense of '(people) reside here (*vasantyasmin*)', means a 'house' and hence the verb '*vivāsayet*' means 'shall break his house.'

Having said thus much, the author of the Mit. concludes by saying that a Brāhmaṇa (convicted of perjury), due to greed or other factors, should be punished with fines, extending in the descending order from one thousand (*paṇa*-s) (for single commission of the offence) but should both be fined and exiled (or made naked or should have his house broken down) in cases of his repeated commission of the offence. The above three alternative punishments are to be inflicted in consideration of the caste (of the offender), the thing (involved in the offence) and single or repeated commission of the offence itself and similar other factors. Or, the punishments of fines and of banishment are to be applied (indiscriminately) to the four *varṇas* in lighter and heavier types of the above offence.

Yāj. (II. 82) has further said: A person, who, after having previously told others some facts (known by him and relating to a case), suppresses them (at the time of their actual delivery in the court) due to vitiating factors

(*tamovṛtaḥ*), shall be fined eight times the punishment but a Brāhmaṇa (offender) shall be simply banished.

D. V. adds: The word *tamovṛtaḥ* means 'having his mind, distracted by affection for the party etc.' 'Eight times' should be construed in relation to the amount of money, involved in that (civil) case, as that is relevant and authorised here. So the Ratnākara has explained it as such. But it has been explained in the Mit. as 'eight times the amount of fine to be imposed on the losing party'. But Graheśvara Miśra has expressed the following opinion in his Vyavahāra-taraṅga: The 'eight times' (spoken of in the above text of Yāj.) is in relation to the several punishments, laid down in the text (of Kātyāyana), beginning with '*hīne karmaṇi pañcaśat*' (i.e. fifty (*paṇa*-s) in trivial offences). Even according to his (i.e. Graheśvara's) opinion, the 'eight times' should be construed as meaning 'eight times the specific fines to be imposed in (civil) suits, involving (recovery of) debts, which are of definite amounts, as he himself has expressed that opinion in his interpretation [of the earlier text of Yāj. (II. 81,)] concerning the words '*pṛthak pṛthak*' (i.e. separately or severally).

The *vivāsana* of a Brāhmaṇa is 'turning him out of the country.' But according to the author of the Mit., this *vivāsana* is of three kinds, viz. making (the Brāhmaṇa offender) naked, breaking his house and turning him out of the country, either of which should be carried into effect according to the particular circumstances of the case under consideration. The same authority has also said in connection with offenders of other *varṇas* that in cases of impossibility of inflicting the prescribed (pecuniary) punishments on them (because of their poverty to pay them), such penalties as causing them to perform laborious work, laid down for their particular castes, tying them up with fetters, throwing them into prison etc. are to be meted out to them. Aggravation of punishments may be obviously made in view of the gravity of the offence. So this authority has explained the suppression of facts (*nihnava*) (by a witness), as pointed out in the verb *nihnute* in the above text of Yāj. (II. 82) as "excessive crookedness."

Nārada (*ṛṇādāna* V. 197) as quoted in the Kṛtyasāgara, is also to the same effect: He, who, after having previously stated to other persons some (relevant) facts, completely suppresses (*atinihnute*) them at the time of his *actual deposition*,[232] shall be more severely punished,[233] as he is a greater culprit than an (ordinary) false witness.

Viṣṇu (V. 179) also says: Forfeiture of the entire property is to be ordered for false witnesses.

[232] D. V. misreads *sākṣitve* as *sākṣitvam*.
[233] D. V. misreads *vineyo* as *vinayo*.

D. V. adds: According to the Ratnākara, the above punishment is for repeated commission of the above offence. Thus it is obvious that the punishment, laid down by Yāj. (II. 82), is concerning the first commission of the offence. But Graheśvara Miśra has said that the previously prescribed monetary punishment is to be inflicted on poor criminals but if possessed of wealth,[234] the offenders are to have their entire property forfeited (by the king).

Manu (VIII. 108) and Nārada have laid down: If disease, fire or death of relatives of a witness occurs only a week after his giving false evidence, he shall be compelled not only to pay the debt, involved in that (money) suit but to suffer additional punishment.

D. V. adds: The occurrence of disease etc. is only an indication of the impurity (i.e. falsity) of the witness and the (additional) punishments, laid down in the above text, are from one thousand *paṇa*-s downwards, or twice the subjectmatter of the (civil) suit in question or beginning with fifty (*paṇa*-s). The idea is that when no certain conclusion about the falsity of the evidence, adduced by a witness, is to be arrived at from visible after-effects of the deposition, invisible (i.e. superhuman) proofs (such as ordeals) may be resorted to for the determination of the appropriate punishments for such perjury. So the above text of Manu and Nārada has been quoted by Graheśvara Miśra for (advising the king) on the arrival at the truth of the deposition after the lapse of a (reasonable) period of time.

Bhavadeva has also said: If within a week of going through an ordeal a witness is found to be attacked with a disease or assailed by any other disturbing condition, he is then to be stamped out as a false witness and as such, he is to pay off the amount of debt (involved in a money-suit) and to suffer additional punishment on that account.

PUNISHMENT OF A WITNESS, WHO, THOUGH KNOWING (ALL) THE FACTS OF A CASE, WITHHOLDS HIS EVIDENCE

Manu (VIII. 107) says: A person, free from any physical or judicial affliction (*agadaḥ*), not deposing in a suit (involving recovery of debt) within three fortnights (=3×15=45 days), shall have to pay the entire (money of the) debt along with its one-tenth part (*daśabandhañca*) as interest.

D. V. adds: The word *agadaḥ* implies 'absence of any unavoidable obstacle' '*Daśabandham* (or one-tenth portion) is (exacted from such a witness) as interest on the debt in question, according to Graheśvara Miśra. So it is

[234] *Daṇḍā-sampattau*, as read by D.V. is meaningless here and should possibly be *dhana-sampattau.*

wrong to take it in the sense of punishment, payable to the king. (cf. Kullū-ka's comment on this verse for this latter interpretation).

The following explanation of the Mit. on the following text (of Yāj. (II. 76) is questionable:

(The text)

A person, not deposing (in a suit for recovery of debt), shall be compelled by the king to pay the entire debt along with its one-tenth part (*sadaśabandhakam*) on the 46th day (of the issue of summons to him) (i.e. just after the expiry of the three fortnights allowed).

(Explanation of the Mit.)

"The entire money of the debt along with its interest shall be caused (by the king) to be made over to the lender by such (recalcitrant) witness. The expression *sadaśabandhakam* means [235] 'along with its one-tenth part' and this one-tenth part is appropriated by the king himself, on the authority of an earlier text of Yāj. (II. 42*a*) to the following effect:

The king should cause the debtor to pay an extra amount of ten per cent of the money, proved by adjudication (i.e. decreed)[236](to be paid back to the creditor)." This latter text (Yāj. II. 42*a*) is concerning the realisation of a citizen's debt from his debtor, as is evident from the use of the word *sādhitāt* (i.e. proved by adjudication) in it, as the author of the Mit. has himself prefaced this text with the following sentence viz. "where the creditor, being weak enough to recover his money from the debtor, causes it to be so done by the king, the following punishment is to be inflicted upon the latter."

Kātyāyana (V. 405) has, however, laid down punishment (on such recalcitrant witnesses): A person, who has witnessed a transaction but would not depose as a witness, shall have to pay the debt (in dispute) and an equal amount of fine but in disputes other than this (i.e. other than those of debts) he ahall be fined three hundred *paṇa*-s.

D. V. adds: The penalty, equal to the amount of the debt, is relating to (the money lent out of) a minor's property. In (criminal) cases like abduction of women, the fine (for a non-deposing witness) is three hundred *paṇa*-s only.

The author of the Mit. has thus commented on the following text of Viṣṇu (VIII. 37*ab*):

(Viṣṇu's text)

Those witnesses, who though capable of giving evidence (in a suit), remain

[235] D. V. misreads *daśamāṁsa-sahitaṁ daśamāṁśaca* as *sadaśamāṁśaśca* only.
[236] D. V. misreads *sādhitād daśakaṁ* as *sādhitādaśakaṁ*.

silent (at the time of deposition), are equally vicious as perjurers and hence deserve the same punishment as the latter.

(Comments of the Mit.)

"As it has been laid down in the above text '(they are like) perjurers as regards punishment', so the specific punishments, prescribed by Manu (VIII. 120-1), beginning with the words *lobhāt sahasram* (i.e. one thousand *paṇa*-s should be imposed as fine, if perjury is committed out of greed) or twice the fines, imposed on a losing party in a suit, shall have to be prescribed (in such cases of silence on the part of the summoned witnesses also for a single commission of the offence) but both the fines and banishment shall have to be ordered for repeated commission of the offence."

According to the Ratnākara, the punishment is forfeiture of the entire property (of the criminal), as laid down by Viṣṇu (for perjurers in an earlier text, p. 347 of D. V.) and also, according to this authority (i.e. the Ratnākara), this earlier text of Visnu is concerning repeated commission of the offence (*loc. cit.*). But according to Graheśvara, the respective amounts, (prescribed by Manu for the respective causes of the commission of the offence of perjury), shall have to be realised as fines from poor culprits only, who do not possess sufficient property (to be awarded the punishment of the forfeiture of their entire property). All these have been discussed by us in the just preceding topic (of perjury).

Vyāsa has laid down on the forging of documents: He, who forges documents relating to the sale or mortgage of immovable property, should have his offence proclaimed to the public and shall have his tongue, hands and ankle-bone cut off.

D. V. adds: The mutilation of the tongue and other parts of the body should be effected in consideration of the nature of the forging (and subject-matter of the document so forged). The several parts of the body, specified in the above text, may be collectively or alternatively cut off. This is the import of the text.

REVIEW OF JUDGMENT AND OTHER CONNECTED MATTERS

Kātyāyana (V. 459) has laid down the following rule in cases, where victory or defeat is decided by means of *ordeals*: The alleged criminal, who is found innocent (by an ordeal) shall have to pay fifty *paṇa*-s (as fee) but he, who is found guilty (by the ordeal) shall be liable to pay a fine.

The same authority (VV. 460-461) has prescribed the following list of (special) fines (for the defeated party in several kinds of ordeal):

These are the respective penalties in the ordeals of poison, water, fire,

balance, sacred libation, rice-grains and in the ordeal of *taptamāṣa* (heated beans):

One thousand *paṇa*-s, .six hundred, five hundred, four hundred, three hundred, two hundred and one hundred (*paṇa*-s) respectively and a lesser fine in the case of lesser ordeals (than these).

D. V. adds: The author of the Mit. has expressed the opinion that these above several kinds of punishments may be applied cumulatively just like that, prescribed by Yāj. (II. 11) in the just following verse.

Yāj. (II. 11) says: In case of *denial* (of the borrowing of money from the plaintiff) by the defendant, the latter should have to make over to the king the amount, proved by the plaintiff and the false plaintiff shall have to pay a fine, twice the amount of the money, involved in the suit.

D. V. quotes the following comments of the author of the Mit. on the above text:

Even in cases involving the plea of a previous judgment (*prāṅ-nyāya*) (modern '*res judicata*') or a counter-charge, the fact (of borrowing) having been denied by the defendant but proved by the plaintiff, the former shall have to pay the actual amounts to the king. But if the plaintiff fails to prove his case, he then becomes a false claimant and thus renders himself liable to make over twice the money. claimed by him, to the king as punishment. All these prescriptions are relating to recovery of debts only. Other punishments have been prescribed for other titles of legal disputes. But such payments in the form of repaid loans and fines in relation to monetary transactions are not possible in lawsuits, not involving any transaction of money. [D. V. contains many misreadings in the above-quoted comments of the Mit., specially in the interchanges made by it of the words viz. *arthī* (i.e. plaintiff) and *pratyarthī* (i.e. defendant)].

Manu (VIII. 51 and 59) also says: If a sum of money, (lent by the plaintiff to the defendant but) denied by the latter, is proved[287] by the former, the latter should then be made to hand it over to the creditor and pay some small amount of fine (to the king) according to his means. But both the defendant who denies a part of the actual money, borrowed by him and the plaintiff, who makes a false claim on a portion of the money, lent by him, are to be fined twice the amount of the portions of money involved, as both of them are vicious.

D. V. adds: All these prescriptions are concerning the wicked intention of the parties. So the Ratnākara has said that "the punishments in the form of the equal amount, twice the amount and some small amount of fine are to be inflicted in consideration of the possession of merits or not by the creditor and the debtor, convicted of bad motives." If that is not

possible, penalties are to be imposed in consideration of the castes of the parties involved. In cases of assertion or denial of a claim due to forgetfulness and similar other causes, either of the parties, being not guilty, is not to be punished. But the Kalpataru has expressed the opinion that if a denial is made due to forgetfulness, unaccompanied with a fraudulent motive, some amount of fine has to be paid by the denying party according to his means. But creditors often claim the repayment of their money, which was not lent to other persons, due to fraudulent motive only and so they are invariably to be fined twice the amount, claimed by them without any consideration (of the possibility of the occurrence of forgetfulness).

Nārada (II. 37) has laid down this special rule about the Śūdra offenders: Those Śūdras, who lodge *false complaints* against Brāhmaṇas (or members of the twice-born classes) should have their tongues cut off and they should be placed on the stake by the king.

Yāj. (II. 305) has given this prescription on the *review of judgments*: In cases of wrongly decided *(dur-dṛṣṭān)* suits, the king should review the judgments and should, if necessary, impose fines, equal to twice the amounts, to have been imposed on the losing parties, on the assessors and the winners in the previous consideration of the cases.

D. V. adds: The phrase *dur-ḍṛṣṭān* (*vyavahārān*) means 'those suits, in which there is an apprehension of not having been justly decided, owing to the transgression of the provisions of law and custom, due to (undue) affection or greed (on the part of the assessors).

The same author (II. 306) further says: The person, who, though lawfully defeated in a suit, considers himself to be not so defeated, should be again vanquished in the court and saddled with twice the amount of fine (to be imposed on the losing party).

Manu (IX. 234) has also said: The king should again decide those cases, which have been wrongly decided by his ministers or the judges and should punish each of them a thousand (*paṇa*-s).

D. V. adds that the above prescription applies to the cases, involving those offences, against which no specific fines have been laid down or to (criminal) cases, like abduction of women, involving no transaction of money. But Kullūka Bhaṭṭa in his commentary on Manu has said that as forfeiture of the entire property has been recommended for some classes of persons, specified in the following text, beginning with the words viz. "Those, who are engaged in accepting bribes", so the punishment, prescribed in the present text of Manu, is concerning persons other than those, specified in the former.

Yāj. (II. 18) has further said: If the suit is with a wager, then the losing

party shall be compelled to pay both the wager, made by himself (*svapaṇañca*) and the fine (to the king) and the money lent, to the creditor.

D. V. adds: By making such statements, as. "If even without review of judgment I do not repay this loan of yours", "If you can prove your case of the entire loan, then only shall I make repayment of this sum to the king," the debtor does not repay his loan but only promises its repayment and defers it, it is a suit with a wager. If in such a suit, contested by the creditor, the debtor is defeated, he shall have to make three kinds of payments:

(1) A fine, equal to the money borrowed, due to the fact of his denial, established by his defeat in the suit, (2) the money, stipulated in the wager and (3) the money, which is the subject-matter of the suit. In case the creditor is defeated, he shall have to pay the fine and the wager only but not the money, said to have been lent by him.

So has Bhavadeva made the following remark, not on review of judgment but in general terms:

"A law-suit may sometimes be accompanied with a wager on account of the determination of the parties, with a statement like the following, "If I am defeated in this case, I shall then pay you a thousand (*paṇa*-s)." So the king should then cause the party, which is defeated in such a case with a wager, to pay the wager, made by the person himself and should impose a fine upon him." He (i.e. Bhavadeva) has then quoted the following text of Nārada (cf. I. 5), relating to a wager, expressed in general terms:

The party, which is defeated in a suit between two parties, made with a wager, is to pay the amount of wager, made by it (only) and the (consequent) fine also.

The author of the Mit. has thus explained the above-quoted text of Yāj. (II. 18): By the insertion of the words *svapaṇañca*, it is emphasized that in cases where one party makes a wager of paying a hundred (*paṇa*-s) and another party promises the payment of fifty (*paṇa*-s), then each of the parties is to pay the respective amount, promised by it, and not more than what has been stipulated by it.

Somebody has said on the authority of the following text of Nārada that 'in cases where the plaintiff has promised to pay a fine, equal to twice the amount, involved in the (money) suit, that promised amount should have to be paid, as it is the wager here and Yāj.,'s text (II. 18), beginning with the words *sapaṇaś cet* [i.e. if (the suit] is with a wager), is also concerning the review of a judgment and is similar in spirit to the text of Nārada (I. 65) beginning with the word *tīritam* (i.e. decided):

(Nārada's text)

"He, who challenges a false case and a decision on testimoney of witnesses as having been unlawfully decided, should pay a fine, equal to twice the value and thus win the case."

(D. V. says that) this is wrong, because in another text of Yāj. (II. 305), beginning with the word *dur-dṛṣṭān* (i.e. wrongly decided cases), which has laid down the prescription of a fine, equal to twice the amount, involved in the suit, there is no mention of a previously given consent on the part of the plaintiff and a winning plaintiff cannot do so beforehand and moreover, the word *sapaṇaśca* (in the latter textof Yāj.) cannot be dissolved, like a copulative compound, into *daṇḍaśca paṇañceti* (i.e. both punishment and wager) and also because the word *paṇa* (i.e. a wager) has got a definite connotation, it cannot be otherwise interpreted, even though possible to do so, resulting in the allocation of the above two texts of Yāj. to definitely different topics. An additional reason of the rejection of the above opinion is that the text of Manu (VIII. 59), beginning with the words *yo yāvan nihnavīta* (i.e. He, who denies etc.), has laid down the punishment on the defeated party of paying twice the amount of the suit, even without a review of the former judgment or a previous promise of the plaintiff to pay such amount.

So it should have to be considered here, twice of what has been spoken of in the above-quoted text of Nārada, beginning with the word *tīritam* (a false case decided as true).

Somebody has thus answered the above question: 'Twice the amount' (*dvaiguṇyam*) is of the value of the thing, involved in the suit, as that is relevant here and serves the purpose of a complement of that 'twice the amount' and also because it is similar in import to that laid down in a text of Yāj. (II. 306) , beginning with the words *yo manyeta* (i.e. He, who considers etc.)

This interpretation is also wrong, because in spite of the existence of denial and similar other factors in both the cases, when a defeated party, either due to haughtiness or bad motive or in defiance of the verdict of the judge, launches into a further dispute, it is but proper that its punishment in such a case should necessarily be higher.

So the settled conclusion is that in a case of denial in a primary suit, twice the amount is concerning the value of that very suit but where the denial is made in a case of review of the former judgment, twice of the twice (four times) the value of the suit should be the proper punishment, as that is relevant there.

The word *tīritam* (in the above text of Nārada) means "decided by means of witnesses, documents etc. and almost followed by a punishment." Other-

wise the infliction of twice the punishment becomes inconsistent, necessitating the unjust infliction of the same punishment in serious and light offences. Thus, it is also settled that the above-decided twice of the twice (i.e. four times) the value of the suit should also be charged as fine in the offence, described in the text of Yāj. (II. 306), beginning with the words *yo manyeta* (i.e. He, who considers etc.). So the view that the *paṇa* (i.e. wager), included in the words *sapaṇaś cet* (Yāj. II. 18), should be taken into account for the infliction of the pecuniary punishment of twice the amount, spoken of, is dispensed with, because if we accept this view, we do not stand in need of the promise having been made by a party and the prescription, involving both the punishment and the party's own wager, becomes split up into two statements. In fact, the use of the word *sapaṇaś(cet)* (in Yāj. II. 18) may be supported as "following a general injunction." Otherwise, the practice of making a wager, involving the payment of an exorbitant sum, in cases, for which the sages have laid down light punishments only, will go out of vogue. It cannot also be argued that the above heightening of the amount of fine is in consonance with the text viz. 'whereas the rich persons (may pay etc.)' (*arthovanto yataḥ santo*)[236], as such aggravation of punishment may also be effected even without the existence of a wager.

Here ends the *vyavahāra-viṣaya* (i.e. the fifth and last) section in the chapter on Miscellaneous offences.

Those miscellaneous offences, which are mutually contradictory and hence difficult to be enumerated and described even by hosts (of scholars), have been exemplified (here) on the basis of their originating causes for the speedy grasp (of the readers) at their intended senses.

Here ends the seventh chapter, entitled 'punishments of miscellaneous offences', in the *Daṇḍaviveka*, composed by Mahāmahopādhyāya Vardhamāna.

CONCLUDING VERSES

This treatise (*vivekaḥ*) on the law of punishments (*daṇḍa-vidhau*) (i.e. *Daṇḍa-viveka*) has been prepared by Śrī-Vardhamāna, son of Śrīmad-Bhaveśa and sprung out of the family of *Śrī-bilva-pañca*, for (the persusal and satisfaction of) the king of Videha (i.e. Mithilā or modern North Bihar). (1)

Though this *nibandha* has been composed by consultation of other men's works only, yet some beauty is discernible here, having been generated by

[237] D. V. misreads this clause (supplied from p. 51 of D. V.) as *anubandho yataḥ sabhyo* which is totally meaningless.

the citation of appropriate texts, just as a new and all-pervading loveliness manifests itself out of the flowers, garlanded together over a crest. (2)

This *nibandha* has been made by the persuasive orders (of the above-mentioned patron king) after my consulations with the following works: The Kalpataru, the Kāmadhenu, the work of Halayudha, the Dharmakoṣa, Smṛtisāra, Kṛtyasāgara, Ratnākara, Pārijāta, the two (Smṛti-) saṁhitās of Manu and Yājñavalkya with their (several) commentaries, Vyavahāra-tilaka, Pradīpikā and Pradīpa. (3)

Let the good men, after having gone through the above treatises and (my) present work, give their opinions about the merits and defects of the latter. (4).

If, after having understood the senses of (my) words, critics, with the express intention of proclaiming their faults, become vociferous, (then there is no harm, done to my work), (as I have the firm conviction that) there will be a satisfaction of the learned in the present *nibandha*, after they have consulted all the works (on this subject), produced by earlier authors. (5) Both the above two kinds of scholars will then become silent for ever, as my request to the entire world is to appreciate the merits of the work, leaving aside the fault-finding spirit. (6)

Here ends the *Daṇḍaviveka*, composed by Mahāmahopādhyāya Śrī-Vardhamāna, the *dharmādhikaraṇika* and belonging to the *Bilva-pañcaka* family.